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WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

DALLAS, TX

WHEN: September 25, at 9:00 a.m.
WHERE: Federal Office Building, 1100 Commerce Street, Room 7A23–175, Dallas, TX.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 734]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to domestic markets during the period from September 9 through September 15, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

EFFECTIVE DATES: Regulation 734 (7 CFR part 910) is effective for the period from September 9 through September 15, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The California-Arizona lemon industry is characterized by a large number of growers located over a wide area. The Committee's estimate of 1990–91 production is 40,834 cars (one car equals 1,000 cartons at 38 pounds net weight each), as compared with 37,881 cars during the 1989–90 season. The production area is divided into three districts which span California and Arizona. The Committee estimates District 1, central California, 1990–91 production at 6,495 cars compared to the 4,158 cars produced in 1989–90. In District 2, southern California, the crop is expected to be 24,700 cars compared to the 24,292 cars produced last year. In District 3, the California desert and Arizona, the Committee estimates a production of 9,639 cars compared to the 9,436 cars produced last year. The National Agricultural Statistics Service will publish on October 11, 1990, an estimate of the 1990–91 lemon crop.

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona lemons. The Committee estimates that about 44 percent of the 1990–91 crop of 40,834 cars will be utilized in fresh domestic channels (17,900 cars), compared with the 1989–90 total of 16,600 cars, about 44 percent of the total production of 37,881 cars in 1989–90. Fresh exports are projected at 22 percent of the total 1990–91 crop utilization compared with 22 percent in 1989–90. Processed and other uses would account for the residual 34 percent compared with 34 percent of the 1989–90 crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to growers and consumers. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of lemons in the market throughout the marketing season and to avoid unreasonable fluctuations in supplies and prices.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the lemon marketing order are required by the Committee from handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

The Committee submitted its marketing policy for the 1990–91 season to the Department on June 19. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This

marketing policy is available from the Committee or Ms. Rodriguez. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on September 5, 1990, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended that 310,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990–91 marketing policy. This recommended amount is 11,000 cartons above the estimated projections in the Committee's revised shipping schedule.

During the week ending on September 1, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 312,000 cartons compared with 308,000 cartons shipped during the week ending on September 2, 1989. Export shipments total 129,000 cartons compared with 128,000 cartons shipped during the week ending on September 2, 1989. Processing and other uses accounted for 231,000 cartons compared with 104,000 cartons shipped during the week ending on September 2, 1989.

Fresh domestic shipments to date for the 1990–91 season total 1,525,000 cartons compared with 1,494,000 cartons shipped by this time during the 1989–90 season. Export shipments total 687,000 cartons compared with 752,000 cartons shipped by this time during 1989–90. Processing and other use shipments total 1,257,000 cartons compared with 631,000 cartons shipped by this time during 1989–90.

For the week ending on September 1, 1990, regulated shipments of lemons to the fresh domestic market were 312,000 cartons on an adjusted allotment of 343,000 cartons which resulted in net undershipments of 31,000 cartons. Regulated shipments for the current week (September 2 through September 8, 1990) are estimated at 285,000 cartons on an adjusted allotment of 339,000 cartons. Thus, undershipments of 54,000 cartons could be carried over into the week ending on September 15, 1990.

The average f.o.b. shipping point price for the week ending on September 1, 1990, was $12.29 per carton based on a reported sales volume of 323,000 cartons compared with last week's average of $12.43 per carton on a reported sales volume of 311,000 cartons. The 1990–91 season average f.o.b. shipping point price to date is $12.67 per carton. The average f.o.b. shipping point price for the week ending on September 2, 1989, was $14.61 per carton; the season average f.o.b. shipping point price at this time during 1989–90 was $14.21 per carton.

The Department's Market News Service reported that, as of September 5, the market is "about steady" for all grades and sizes of California-Arizona lemons and demand is good for sizes 75 through 140 (all grades) and fairly good for all other sizes. At the meeting, several Committee members commented that overall demand for lemons is good. One Committee member commented that demand for small fruit is improving, especially in the South and East, primarily due to decreasing supplies of lemons from Florida and the Bahamas. That member also reported that the transition from District 2 to 3 is progressing smoothly. The Committee unanimously recommended volume regulation for the period from September 9 through September 15, 1990.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the California-Arizona 1990–91 season average fresh on-tree price is estimated at $9.54 per carton, 116 percent of the projected season average fresh on-tree parity equivalent price of $8.20 per carton. The California-Arizona 1989–90 season average fresh on-tree estimated at $8.53, 114 percent of the projected season average fresh on-tree parity equivalent price of $7.47 per carton.

Limiting the quantity of lemons that may be shipped during the period from September 9 through September 15, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

Based on considerations of supply and market conditions, it is found that this action will tend to effectuate the declared policy of the Act.

Based on the above information, the Administrator of the AMS has determined that issuance of this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until September 5, 1990, and this action needs to be effective for the regulatory week which begins on September 9, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.1034 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.1034 Lemon Regulation 734.

The quantity of lemons grown in California and Arizona which may be handled during the period from September 9 through September 15, 1990, is established at 310,000 cartons.

Dated: September 6, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–21284 Filed 9–7–90; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-84-AD; Amendment 39-6721]

Airworthiness Directives; British Aerospace Model BAe 125-800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 125-800A series airplanes, which requires the installation of reinforcing straps on the windscreen center pillar. This amendment is prompted by a structural test program and analysis which revealed the potential for fatigue cracks in the windscreen center pillar. This condition, if not corrected, could result in fatigue cracks in the windshield center pillar and subsequent rapid decompression of the airplane.

EFFECTIVE DATE: October 16, 1990.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113, telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model BAe 125-800A series airplanes, which requires the installation of reinforcing straps on the windscreen center pillar, was published in the Federal Register on June 1, 1990 (55 FR 22354).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of an alternate means of compliance.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. The FAA has determined that this change will neither increase the economic burden on any operator, nor increase the scope of the rule.

It is estimated that 67 airplanes of U.S. registry will be affected by this AD, that it will take approximately 55 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for the modification kit is $10,330. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $839,510.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 125-800A series airplanes, Serial Numbers 258001 through 258090, inclusive, certificated in any category. Compliance is required prior to the accumulation of 6,000 landings since new or within 30 days after the effective date of this AD, whichever occurs later, unless previously accomplished.

To prevent fatigue cracks in the windscreen center pillar and subsequent rapid decompression of the airplane, accomplish the following:

A. Install reinforcing straps on the bottom aft portion of the upper and lower web sections of the windscreen center pillar assembly in accordance with British Aerospace Service Bulletin 53-65-3168A, Revision 1, dated March 9, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective October 16, 1990.

Issued in Renton, Washington, on August 30, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-21128 Filed 9-7-90; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1201

Statement of Organization and General Information

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1201, "Statement of Organization and General Information," to reflect the current organizational structure. This regulation sets forth NASA's purpose and functions as established by the National Aeronautics and Space Act of 1958, as amended.

EFFECTIVE DATE: September 10, 1990.

ADDRESSES: Management Operations Office, Code NA, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Margaret M. Herring, 202–453–2922.

SUPPLEMENTARY INFORMATION: NASA published 14 CFR part 1201 as a final rule on August 25, 1987 (52 FR 31985). This amendment revises NASA's organizational structure and includes descriptions of the organizations and functions of NASA's program offices and field installations.

Since this action is internal and administrative in nature and does not effect existing regulations no public comment period is required.

NASA has determined that this regulation does not constitute a major rule for the purposes of Executive Order 12291 and it will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 1201

Organization and functions (Government agencies).

For reasons set forth in the Preamble, 14 CFR part 1201 is revised to read as follows:

PART 1201—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

Subpart 1—Introduction

Sec.

1201.100 Creation and authority.
1201.101 Purpose.
1201.102 Functions.
1201.103 Administration.

Subpart 2—Organization

1201.200 General.

Subpart 3—Boards and Committees

1201.200 Boards and committees.

Subpart 4—General Information

1201.400 NASA procurement program.
1201.401 Special document depositories.
1201.402 NASA Industrial Applications Centers.

Authority: 5 U.S.C. 552.

Subpart 1—Introduction

§ 1201.100 Creation and authority.

The National Aeronautics and Space Administration was established by the National Aeronautics and Space Act of 1958 (72 Stat. 426, 42 U.S.C. 2451 et seq.), as amended (hereafter called the "Act").

§ 1201.101 Purpose.

It is the purpose of the National Aeronautics and Space Administration to carry out aeronautical and space activities of the United States. Such activities shall be the responsibility of, and shall be directed by, the National Aeronautics and Space Administration, except that activities peculiar to or primarily associated with the development of weapons systems, military operations, or the defense of the United States shall be the responsibility of, and shall be directed by, the Department of Defense.

§ 1201.102 Functions.

In order to carry out the purpose of the Act, NASA is authorized to conduct research for the solution of problems of flight within and outside the Earth's atmosphere; to develop, construct, test, and operate aeronautical and space vehicles for research purposes; to operate a space transportation system including the space shuttle, upper stages, space program, space station, and related equipment; and to perform such other activities as may be required for the exploration of space. The term "aeronautical and space vehicles" means aircraft, missiles, satellites, and other space vehicles, together with related equipment, devices, components, and parts. It conducts activities required for the exploration of space with manned and unmanned vehicles and arranges for the most effective utilization of the scientific and engineering resources of the United States with other nations engaged in aeronautical and space activities for peaceful purposes.

§ 1201.103 Administration.

(a) NASA is headed by an Administrator, who is appointed from civilian life by the President by and with the advice and consent of the Senate. The Administrator is responsible, under the supervision and direction of the President, for exercising all powers and discharging all duties of NASA.

(b) The Deputy Administrator of NASA is also appointed by the President from civilian life by and with the advice and consent of the Senate. The Deputy Administrator acts with or for the Administrator within the full scope of the Administrator's responsibilities. In the Administrator's absence, the Deputy Administrator serves as Acting Administrator.

Subpart 2—Organization

§ 1201.200 General.

(a) NASA's basic organization consists of the Headquarters, eight field installations, the Jet Propulsion Laboratory (a Government-owned, contractor-operated facility), and several component installations which report to Directors of Field Installations. Responsibility for overall planning, coordination, and control of NASA programs is vested in NASA Headquarters located in Washington, DC. NASA Headquarters is comprised of:

(1) The Office of the Administrator which includes the Administrator, Deputy Administrator, Associate Deputy Administrator, Assistant Deputy Administrator, and the Executive Officer.

(2) Four Program Offices which are responsible for planning, direction, and management of agencywide research and development programs. Officials-in-Charge of these Program Offices report directly to the Administrator and they consist of:

(i) The Office of Aeronautics, Exploration and Technology which is responsible for conducting programs to develop advanced technology to enable and enhance an aggressive pursuit of national objectives in aeronautics, space, and transatmospherics, including the National Aero-Space Plane Program; to demonstrate the feasibility of this advanced technology in ground, flight, and in-space facilities to ensure its early utilization; and to ensure the application of agency capabilities and facilities to programs of other agencies and the United States aerospace industry. The Office is the focal point for the Space Exploration Initiative, a long-term program of robotic and human exploration which will include sending humans to the Moon early in the 21st century to establish a permanent outpost, and then conducting human missions to the planet Mars. In addition, the Office is responsible for managing the Ames, Langley, and Lewis Research Centers.

(ii) The Office of Space Science and Applications is responsible for efforts to

understand the origin, evolution, and structure of the universe, the solar system, and the integrated functioning of the Earth. The Office conducts space application activities, such as remote sensing of the Earth, developing and understanding microgravity processes, and developing and testing advanced space communications as well as basic and applied science to facilitate life in space. The Office also is responsible for managing the Goddard Space Flight Center and the Jet Propulsion Laboratory and maintaining contacts with the Space Science Board of the National Academy of Sciences, the Space Applications Board, and other science advisory boards and committees. The Office coordinates its program with various government agencies, foreign interests, and the private sector. Its objectives are accomplished through research and development in astrophysics, life sciences, Earth sciences and applications, solar system exploration, space physics, communications, microgravity science and applications, and communications and information systems. The Office also utilizes the space shuttle, expendable launch vehicles, automated spacecraft, human-occupied spacecraft, sounding rockets, balloons, aircraft, and ground-based research to conduct its programs.

(iii) The Office of Space Flight is responsible for advancing the space shuttle, for developing Freedom, a permanently manned space station, and for carrying out space transportation and other associated programs, including the management of the Johnson Space Center, Marshall Space Flight Center, Kennedy Space Center, and John C. Stennis Space Center. The Office plans, directs, and executes the development, acquisition, testing, and operations of all elements of the Space Transportation System; plans, directs, and manages execution of prelaunch, launch, flight, landing, postflight operations, and payload assignments; maintains and upgrades the design of ground and flight systems throughout the operational period; procures recurring system hardware; manages all U.S. Government civil launch capabilities and spacelab development, procurement, and operations; develops and implements necessary policy with other government and commercial users of the Space Transportation System; and coordinates all research. The Office is also responsible for managing and directing all aspects of the Space Station Freedom Program and achieving the goals established by the President. These goals include developing a permanently manned space station in the mid-1990's and involving other countries in the program, and promoting scientific research, technology development, and private-sector investment in space. The Johnson Space Center, the Marshall Space Flight Center, the Goddard Space Flight Center, and the Lewis Research Center are responsible for developing major elements of the space station. The concept of the Space Station Freedom Program is to privide a manned base, initially accommodating a crew of eight people.

(iv) The Office of Space Operations is responsible for an array of functions critical to operations of this Nation's space programs. They include spacecraft operations and control centers; ground and space communications; data acquisition and processing; flight dynamics and trajectory analyses; spacecraft tracking; and applied research and development of new technology. The Space Transportation System, Tracking and Data Relay Satellite System, Deep Space Network, Spaceflight Tracking and Data Network, and various other facilities currently provide the requirements for NASA's space missions. A global communications system links tracking sites, control centers, and data processing facilities that provide real-time data processing for mission control, orbit, and attitude determination, and routine processing of telemetry data for space missions.

(3) Thirteen Headquarters Offices which provide agencywide leadership in management and administrative processes. Officials-in-Charge of these offices report to the Administrator.

(b) Directors of NASA Field Installations and other component installations are responsible for execution of NASA's programs, largely through contracts with research, development, and manufacturing enterprises. A broad range of research and development activities are conducted at NASA field installations and other component installations by Government-employed scientists, engineers, and technicians to evaluate new concepts and phenomena and to maintain the capability required to manage contracts with private enterprises. Although these field installations have a primary program responsibility to the program office to which they report, they also conduct work for the other program offices.

(c) The NASA field installations and a brief description of their responsibilities are as follows:

(1) *Ames Research Center, Moffett Field, CA 94035.* The Center manages a diverse program of research and development in support of the Nation's aerospace program and maintains unique research and test facilities including wind tunnels, simulators, supercomputers, and flight test ranges. Current areas of emphasis include the development of aerospace vehicle concepts through synergistic application of the Center's complete capabilities, ranging from computation and experimentation (in wind tunnels and simulators) to flight testing; research in support of human adaptation and productivity in the microgravity environment; and research and development of human/machine interfaces and levels of automation to optimize the operation of future aerospace systems, as well as future hypersonic vehicles and probes. Specifically, the Center's major program responsibilities are concentrated in computational and experimental fluid dynamics and aerodynamics; fluid and thermal physics; rotorcraft, powered-lift, and high-performance aircraft technology; flight simulation and research; controls and guidance; aerospace human factors; automation sciences, space and life sciences; airborne sciences and applications; space biology and medicine; and ground and flight projects in support of aeronautics and space technology. In addition to these major program responsibilities, the Center provides support for military programs and major agency projects such as the Space Transportation System, Space Station, and the National Aero-Space Plane.

(2) *Goddard Space Flight Center, Greenbelt, MD 20771.* The Center conducts Earth-orbital spacecraft and experiment development flight operations. It develops and operates tracking and data acquisition systems and conducts supporting mission operations. It also develops and operates spacelab payloads; space physics research program; Earth science and applications programs; life science programs; information systems technology; sounding rockets and sounding rocket payloads; launch vehicles; balloons and balloon experiments; planetary science experiments; and sensors for environmental monitoring and ocean dynamics.

(3) *John F. Kennedy Space Center, Kennedy Space Center, FL 32899.* The Center designs, constructs, operates, and maintains space vehicle facilities and ground support equipment for launch and recovery operations. The

Center is also responsible for prelaunch operations, launch operations, and payload processing for the space shuttle and expendable launch vehicle programs, and landing operations for the space shuttle orbiter; also recovery and refurbishment of the reusable solid rocket booster.

(4) *Langley Research Center, Hampton, VA 23665.* The Center performs research in long-haul aircraft technology; general aviation commuter aircraft technology; military aircraft and missile technology; National Aero-Space Plane; fundamental aerodynamics; computational fluid dynamics; propulsion/airframe integration; unsteady aerodynamics and aeroelasticity; hypersonic propulsion; aerospace acoustics; aerospace vehicle structures and materials; computational structural mechanics; space structures and dynamics; controls/structures interaction; aeroservoelasticity; interdisciplinary research; aerothermodynamics; aircraft flight management and operating procedures; advanced displays; computer science; electromagnetics; automation and robotics; reliable, fault-tolerant systems and software; aircraft flight control systems; advanced space vehicle configurations; advanced space station development; technology experiments in space; remote sensor and data acquisition and communication technology; space electronics and control systems; planetary entry technology; nondestructive evaluation and measurements technology; atmospheric sciences; Earth radiation budget; atmospheric dynamics; space power conversion and transmission; space environmental effects; and systems analysis of advanced aerospace vehicles.

(5) *Lewis Research Center, Cleveland, OH 44135.* The Center manages the design and development of the power generation, storage, and distribution system for Space Station Freedom. The Center is also responsible for conducting research and technology activities in the following areas: airbreathing propulsion systems, including those needed for the National Aero-Space Plane; turbomachinery thermodynamics and aerodynamics; fuel and combustion; aero and space propulsion systems; space power; power transmission; tribology; internal engine computational fluid dynamics; materials; structural analysis; instrumentation; space communications, including design and development of the Advanced Communications Technology Satellite (ACTS); the ACTS experiments program; design, development, and fabrication of microgravity space experiments; and the procurement of intermediate and large-class expendable launch vehicle launch services. The Center also plays an important role in planning the Space Exploration Initiative and in implementing the Exploration Technology Program. In addition, the Center provides research and technology support to the Department of Defense and assists the private sector in identifying potential industrial applications and commercialization of NASA-developed technology.

(6) *Lyndon B. Johnson Space Center, Houston, TX 77058.* The Center manages the development and operation of the space shuttle, a manned space transportation system developed for the United States by NASA. The shuttle is designed to reduce the cost of using space for commercial, scientific, and defense needs. The Center is responsible for development, production, delivery, and flight operation of the orbiter vehicle, that portion of the space shuttle that is designed to take crew and experiments into space, place satellites in orbit, retrieve ailing satellites, etc. The shuttle crew (up to seven people) includes pilots, mission specialists, and payload specialists. Crew personnel (other than payload specialists) are recruited, selected, and trained by the Center. It is also responsible for design, development, and testing of spaceflight payloads and associated systems for manned flight; for planning and conducting manned spaceflight missions; and for directing medical, engineering, and scientific experiments that are helping us understand and improve the environment. For the space station program, the Center provides support in the areas of headquarters level A responsibilities and project management.

(7) *George C. Marshall Space Flight Center, Marshall Space Flight Center, AL 35812.* The Center manages, develops, and tests the External Tank, Solid Rocket Booster, and main engines, which are major portions of the space shuttle project; oversees the development of the U.S. Spacelab; manages the space telescope; and conducts research in structural systems, materials science engineering, electronics, guidance, navigation, and control.

(8) *John C. Stennis Space Center, Stennis Space Center, MS 39529.* The Center plans and manages research and development activities in the field of space and terrestrial applications; space flight; research in oceanography, meteorology, and environmental sciences. The Center coordinates research between the Administration and other government agencies.

(d) The NASA Office of Inspector General is established pursuant to Act of Congress, Public Law 95–452, as amended, 5 U.S.C. App. III. The Inspector General is appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. The Inspector General appoints an Assistant Inspector General for Auditing, who is responsible for supervising the performance of auditing activities relating to NASA's programs and operations, and an Assistant Inspector General for Investigations, who is reponsible for supervising the performance of NASA's investigative activities. It is the duty and responsibility of the Inspector General to provide policy direction, to conduct, supervise and coordinate audits and investigations related to NASA's programs and operations in order to promote economy and efficiency, and to prevent and detect fraud and abuse in these programs and operations. The Inspector General must report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law. The Inspector General is responsible for keeping the Administrator and Congress fully and currently informed, by reports concerning fraud and other serious problems, abuses, and deficiencies related to NASA's programs and operations, for recommending corrective actions, and for reporting on the progress in implementing such corrective actions. The Inspector General reports to the Administrator, but neither the Administrator nor the Deputy Administrator can prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena under authority of the Inspector General Act. In carrying out the responsibilities, the Inspector General shall comply with standards established by the Comptroller General of the United States for audits of governmental organizations, programs, activities, and functions. The Inspector General reports to Congress on a semiannual basis, summarizing the activities of the office. These reports are available to the public upon request within 60 days of their transmission to

the Congress. Anyone wishing to report instances of fraud, waste, or mismanagement in NASA's programs and operations can call the Inspector General Hotline at 755–3402 in the Washington, DC, area or toll free (800) 424–9183 for all other areas. The office maintains a 24-hour answering service. Identities of complainants can be kept confidential. Written complaints can be sent to the NASA Inspector General, P.O. Box 23089, L'Enfant Plaza Station, Washington, DC 20026.

(e) For more detailed description of NASA's organizational structure, see the "U.S. Government Manual."

Subpart 3—Boards and Committees

§ 1201.300 Boards and committees.

Various boards and committees have been established as part of the permanent organization structure of NASA. These include:

(a) *Board of Contract Appeals.* (1) The Board is established in accordance with the Contract Disputes Act of 1978 (41 U.S.C. 601–613). The function of the Board is to decide appeals from decisions of contracting officers relating to a contract made by NASA.

(2) The charter of the Board is set forth in subpart 1 of part 1209 of this chapter. The Board's rules of procedure are set forth in 14 CFR part 1241.

(3) The texts of decisions of the Board are published by Commerce Clearing House, Inc., in Board of Contract Appeals Decisions, and are hereby incorporated by reference. All decisions and orders are available for inspection and for purchase from the Recorder of the Board of NASA Headquarters, Washington, DC. Decisions and orders issued after July, 1967, area available for inspection and for purchase at NASA Information Centers.

(b) *Contract Adjustment Board.* (1) The function of the Board is to consider and dispose of requests by NASA contractors for extraordinary contractual adjustments pursuant to Public Law 85–804 (50 U.S.C. 1431–35) and Executive Order 10789 dated November 14, 1958 (23 FR 8397).

(2) The charter of the Board is set forth at subpart 3 of part 1209 of this chapter. The Board's rules of procedure are set forth at 48 CFR part 1850.

(3) Indexes of and texts of decisions of the Board are available for inspection and for purchase from the Chairperson of the Board, National Aeronautics and Space Administration, Washington, DC 20546, and from the NASA Information Centers.

(c) *Inventions and Contributions Board.* (1) The function of the Board is to consider and recommend to the Administrator the action to be taken with respect to:

(i) Petitions for waiver of rights to any invention or class of inventions made during the performance of NASA contracts; and

(ii) Applications for award for scientific and technical contributions determined to have significant value in the conduct of aeronautical and space activities, pursuant to the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457 (f) and (g), 2458), and the Government Employees Incentive Awards Act (5 U.S.C. 2121–23), respectively.

(2) The charter of the Board is set forth at subpart 4 of part 1209 of this chapter. The Board's rules of procedure are set forth at 14 CFR parts 1240 and 1245.

(3) The decisions of the Board on requests for waiver are available for inspection at NASA Headquarters, Office of Inventions and Contributions Board.

Subpart 4—General Information

§ 1201.400 NASA procurement program.

(a) The Office of Procurement, headed by the Assistant Administrator for Procurement, serves as a central point of control and contact for NASA procurements. Although the procurements may be made by the field installations, selected contracts and contracts of special types are required to be approved by the Assistant Administrator for Procurement prior to their execution. The Office of Procurement is also responsible for formulation of NASA procurement policies and provides overall assistance and guidance to NASA field installations to achieve uniformity in NASA procurement processes.

(b) The NASA procurement program is carried out principally at the NASA field installations listed in subpart 2 of this part and in the "U.S. Government Manual." The Headquarters Acquisition Division is responsible for contracts with foreign governments and foreign commercial organizations, the procurement of materials and services required by Headquarters offices except for minor office supplies and services procured locally, and the award of grants and cooperative agreements for Headquarters. The Headquarters Space Station Freedom Procurement Office is responsible for managing and directing the full range of acquisition functions in support of the Space Station Freedom Program Office.

(c) All procurements are made in accordance with the Federal Acquisition Regulation (FAR) (48 CFR chapter 1) and the NASA Federal Acquisition Regulation Supplement (NASA/FAR Supplement) (48 CFR chapter 18). Copies of these publications are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, on an annual subscription basis.

§ 1201.401 Special document depositories.

NASA provides the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, with copies of NASA and/or NASA-sponsored unclassified unlimited documents to provide availability to the public. These documents may be reproduced by NTIS and sold at prices established by NTIS. NASA also uses the regional depository libraries established through the Federal Depository Library Program by chapter 19 of title 44 of the U.S. Code under the Government Printing Office (GPO) to make its technical documents and bibliographic tools available to the general public. These depository libraries are responsible for permanent retention of material, interlibrary loan, and reference services.

§ 1201.402 NASA Industrial Applications Centers.

(a) As part of its Technology Utilization Program—a program designed to transfer new aerospace knowledge and innovative technology to nonaerospace sectors of the economy—NASA operates a network of Industrial Applications Centers. These centers serve U.S. industrial clients on a fee paying basis by providing access to literally millions of scientific and technical documents published by NASA and by other research and development organizations. Using computers, the NASA Industrial Applications Centers conduct retrospective and current awareness searches of available literature in accordance with client interests, and assist in the interpretation and adaption of retrieved information to specified needs. Such services may be obtained by contacting one of the following:

(1) Aerospace Research Applications Center (ARAC), Indianapolis Center for Advanced Research, 611 N. Capital Avenue, Indianapolis, IN 46204.

(2) Southern Technology Applications Center, Progress Center, Box 24, 1 Progress Boulevard, Alachua, FL 32615.

(3) NASA/UK Technology Applications Program, University of Kentucky, 10 Kinkead Hall, Lexington, KY 40506–0057.

(4) NASA Industrial Applications Center, 823 William Pitt Union, University of Pittsburgh, Pittsburgh, PA 15260.

(5) New England Research Application Center (NERAC), One Technology Drive, Tolland, CT 06084.

(6) North Carolina Science and Technology Research Center, P.O. Box 12235, Research Triangle Park, NC 27709.

(7) Technology Application Center (TAC), University of New Mexico, Albuquerque, NM 87131.

(8) Kerr Industrial Applications Center, Southeastern Oklahoma State University, Station A, Box 2584, Durant, OK 74701.

(9) NASA Industrial Applications Center, Research Annex, Room 200, University of Southern California, 3716 South Hope Street, Los Angeles, CA 90007.

(10) NASA/SU Industrial Applications Center, Southern University, Department of Computer Science, Baton Rouge, LA 70813–2065.

(b) To obtain access to NASA-developed computer software, contact: Computer Software Management and Information Center (COSMIC), University of Georgia, Athens, GA 30602.

Dated: August 31, 1990.

James R. Thompson, Jr.,

Deputy Administrator.

[FR Doc. 90–21139 Filed 9–7–90; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor address for Coopers Animal Health, Inc.

EFFECTIVE DATE: September 10, 1990.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: Coopers Animal Health, Inc., has informed FDA of a change of address from Kansas City, KS 66103–1438, to 1201 Douglas Ave, Kansas City, KS 66103–1438. FDA is amending the regulations in 21 CFR 510.600 (c)(1) and (c)(2) to reflect the new address.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for "Coopers Animal Health, Inc.," and in the table in paragraph (c)(2) in the entry for "017220" by removing "Kansas City, KS 66103–1438" and inserting in its place "1201 Douglas Ave., Kansas City, KS 66103–1438".

Dated: August 24, 1990.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 90–21144 Filed 9–7–90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8312]

RIN 1545–AM07

Extension of Time To File for Taxpayers Outside the United States and Puerto Rico

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final Income Tax Regulations relating to the extension of time to file federal income tax returns and to pay any taxes owing by United States citizens and United States residents who are outside of the United States and Puerto Rico. Section 6081 of the Internal Revenue Code Act of 1986 provides that the Secretary may grant a reasonable extension of time to file federal income tax returns. These regulations provide the public with guidance needed to comply with that section and affect United States citizens and residents outside of the United States and Puerto Rico.

DATES: Effective Date: September 10, 1990. These final regulations apply to federal income tax returns due on or after April 15, 1988.

FOR FURTHER INFORMATION CONTACT: Caren S. Shein of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:CORP:T:R (INTL–0461–87) (202–566–3452, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On February 23, 1989, the Federal Register published proposed amendments (54 FR 7783) to the Income Tax Regulations (26 CFR part 1) and temporary Income Tax Regulations (54 FR 7762) under section 6081(a) of the Internal Revenue Code of 1986. One written comment responding to the notice was received. No public hearing was requested and, therefore, a hearing was not held. After consideration, the proposed regulations are adopted with only minor changes by this Treasury Decision.

Explanation of Provisions

A commenter suggested that § 1.6081–4T(a)(5) be amended to include non-military United States citizens and residents on temporary business assignment outside the United States and Puerto Rico but whose tax home remains in the United States. Section 1.6081–4T(a)(5) currently provides an automatic extension of time to file an income tax return for United States citizens or residents whose tax homes are outside the United States and Puerto Rico. That section recognizes that an individual who maintains his tax home abroad may have difficulty filing a return by the due date. Section 1.6081–4T(a)(6) provides an automatic extension of time to file an income tax return for United States citizens or residents in military or naval service on duty, including non-permanent or short term duty, outside the United States and Puerto Rico. That section recognizes that, due to the nature of military service, an individual may be unable to

file a return on the due date. The Service does not believe that a non-military individual on short term assignment outside the United States and Puerto Rico would encounter hardships as significant as those faced by individuals to whom the above provisions apply in filing a return by the due date or requesting an extension of time to file. Therefore, the regulations have not been amended to reflect this comment.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Peter J. Hanley, formerly of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR 1.6001–1 through 1.6109–2

Income taxes, Administration and procedure, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX REGULATIONS

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

§ 1.6081–4T [Removed]

Par. 2. Section 1.6081–4T is removed.

Par. 3. New § 1.6081–5 is added to read as follows:

§ 1.6081–5 Extensions of time in the case of certain partnerships, corporations and U.S. citizens and residents.

(a) The rules in paragraphs (a) through (e) of this section apply to returns of income due after April 15, 1988. An extension of time for filing returns of income and for paying any tax shown on the return is hereby granted to and including the fifteenth day of the sixth month following the close of the taxable year in the case of:

(1) Partnerships which are required under § 1.6031–1(e)(2) to file returns on the fifteenth day of the fourth month following the close of the taxable year of partnership, and which keep their records and books of account outside the United States and Puerto Rico;

(2) Domestic corporations which transact their business and keep their records and books of account outside the United States and Puerto Rico;

(3) Foreign corporations which maintain an office or place of business within the United States;

(4) Domestic corporations whose principal income is from sources within the possessions of the United States;

(5) United States citizens or residents whose tax homes and abodes, in a real and substantial sense, are outside the United States and Puerto Rico; and

(6) United States citizens and residents in military or naval service on duty, including non-permanent or short term duty, outside the United States and Puerto Rico.

(b) In order to qualify for the extension under this section, a statement must be attached to the return showing that the person for whom the return is made is a person described in paragraph (a) of this section.

(c) For purposes of paragraph (a)(5) of this section, whether a person is a United States resident will be determined in accordance with section 7701(b) of the Code. The term "tax home," as used in paragraph (a)(5), will have the same meaning which it has for purposes of section 162(a)(2) (relating to travel expenses away from home). If a person does not have a regular or principal place of business, that person's tax home will be considered to be his regular place of abode in a real and substantial sense.

(d) In order to qualify for the extension under paragraph (a)(6), the assigned tour of duty outside the United States and Puerto Rico must be for a period that includes the entire due date of the return.

(e) A person otherwise qualifying for the extension under paragraph (a)(5) or paragraph (a)(6) shall not be disqualified because he is physically present in the United States or Puerto Rico at any time, including the due date of the return.

(f) With respect to income tax returns due on April 15, 1988, an extension of time for filing a return of income and for paying any tax shown on that return is hereby granted to and including the fifteenth day of the sixth month following the close of the taxable year in the case of citizens or residents of the United States who are traveling outside the United States and Puerto Rico. A taxpayer will be considered to be traveling outside the United States and Puerto Rico only if the period of travel outside the United States and Puerto Rico is a period of at least fourteen days continuous travel that includes all of April 15, 1988. For returns due after April 15, 1988, no extension will be granted to taxpayers traveling outside the United States and Puerto Rico.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: July 27, 1990.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90–21107 Filed 9–7–90; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 218

RIN 1010–AB32

Interest Rate Applicable to Late Payment of Monies Due the Government and Paid on Late Disbursement of Revenues to States and Indians

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its regulations governing the rate of interest charged to lessees and other royalty payors on late payment of royalties and other monies due the Federal Government. The MMS also is amending its regulations governing the rate of interest paid by MMS on late disbursements of an Indian tribe's or allottee's royalty or a State's share of royalty revenues. Under the new rule, the same interest rate will be used for late payments and late disbursements. This change is necessary because the Tax Reform Act of 1986 amended section 6621 of the Internal Revenue Code 1954, which provides the rate at which interest is calculated.

EFFECTIVE DATE: November 1, 1990.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, Minerals Management Service, Royalty Management Program, Denver Federal Center, Building 85, P.O. Box 25165, Mail

Stop 3910, Denver, Colorado 80225, (303) 231-3432, (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal author of this final rule is Marvin D. Shaver of the Rules and Procedures Branch, Royalty Management Program, Minerals Management Service, Lakewood, Colorado.

I. Background

In the Notice of Proposed Rulemaking (54 FR 14364, April 11, 1989), MMS explained in detail how section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1721, requires the Secretary of the Interior to: (a) Charge interest on royalty payments from Federal and Indian oil and gas leases that are paid late (section 111(a), 30 U.S.C. 1721(a)); (b) pay interest to States on disbursements which are not made by the time prescribed under 30 U.S.C. 191, as amended by FOGRMA section 104(a), 30 U.S.C. 1714 (section 111(b), 30 U.S.C. 1721(b)); and (c) pay interest to Indian tribes and allottees if royalty revenues are not disbursed by the date prescribed in FOGRMA section 104(b), 30 U.S.C. 1714 (section 111(d), 30 U.S.C. 1721(d)).

Sections 111 (a), (b), and (d) of FOGRMA each provide that interest shall be "at the rate applicable" under section 6621 of the Internal Revenue Code of 1954 (IRC) (26 U.S.C. 6621). Section 6621 establishes the rate of interest that must be applied to late payment of taxes under 26 U.S.C. 6601(a), and to refunds of overpayment of taxes under 26 U.S.C. 6611(a).

After FOGRMA's enactment, section 6621 was modified. Prior to its amendment by the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2744, section 6621 contained a single rate of interest, 26 U.S.C. 6621 (1982). Thus, FOGRMA interest provisions originally imposed the same rate of interest to both late payments of royalty and to late disbursements of monies to the States and Indians. As amended, however, section 6621 provides for two rates. For late payments of tax, the rate is a "short-term Federal rate" plus 3 percentage points, 26 U.S.C. 6621(a)(2) (Supp. 1986). For refunds of overpayments, the rate is the same "short-term Federal rate" plus 2 percentage points, 26 U.S.C. 6621(a)(1) (Supp. 1986). Thus, under section 6621, as amended, late payments of taxes have a rate of interest charged to them that is 1 percentage point higher than the rate the Government pays on refunds of overpayments of taxes. The effect of this two-rate provision is to impose a higher interest burden on taxpayers who pay taxes late than the Government pays when it refunds overpayments of taxes.

The FOGRMA interest provisions invoke the rates established by section 6621 without qualification, and were not amended either in conjunction with or subsequent to the amendment of section 6621 in 1986. Consequently, there is some ambiguity as to which of the two rates under section 6621 should be applied for FOGRMA payors. At the time FOGRMA became law, there was only one interest rate reference in section 6621. Consequently, there is nothing in FOGRMA's legislative history to provide guidance for the present situation. The FOGRMA legislative history (H.R. Rep. No. 859, 97th Cong., 2d Sess. 36 (1982), reprinted in 1982 *U.S. Code Cong. and Admin. News* 4268, 4290), discusses only the following reasons for using the rate from IRC:

> Imposition of such high penalties against those owing money to the United States is to remove the incentives such persons may have to hold the money owed and invest it rather than pay it on time to the MMS. Also, the high penalty required of the United States should be a strong incentive to the MMS to disburse moneys under the mineral leasing laws of 1920 promptly.

Since a rate from section 6621 must be applied under section 111 (a), (b), and (d) of FOGRMA, 30 U.S.C. 1721 (a), (b), and (d), MMS described, in the Notice of Proposed Rulemaking, the four possible options. First, the lower rate for refund of overpayments in section 6621(a)(1) could be applied uniformly under FOGRMA section 111 (a), (b), and (d). Second, the higher rate for late payment of taxes in section 6621(a)(2) could be applied uniformly under FOGRMA section 111(a), (b), and (d). Third, the rate for refund of overpayments could be applied under FOGRMA section 111(a) (late payment of royalty) and the rate for late payment of taxes could be applied under FOGRMA section 111 (b) and (d) (late disbursement to the States and Indians). Fourth, the rate for refund of overpayments could be applied under FOGRMA section 111 (b) and (d) and the rate for late payments could be applied under FOGRMA section 111(a).

In the Notice of Proposed Rulemaking MMS solicited comments on the four options as to which of the two interest rates in the amended section 6621 should be applied under the various FOGRMA provisions referring to that section. Under MMS's existing rules, which refer only to section 6621, there is an ambiguity as to which of the two section 6621 rates apply. The MMS's principal proposal was that the higher interest rate in IRC 6621(a)(2) should apply to late payments of monies due the Government, while the lower rate in IRC 6621(a)(1) should apply to late disbursements by MMS of royalty revenues to the States and Indians.

II. Comments Received on Proposed Rule

As stated above, MMS published a Notice of Proposed Rulemaking in the **Federal Register** on April 11, 1989 (54 FR 14364). The proposed rule provided as the principal proposal that the higher interest rate in IRC 6621(a)(2) should apply to late payments of monies due the Government while the lower rate in IRC 6621(a)(1) should apply to late disbursements by MMS of royalty revenues to the States and Indians. In addition, as described above, the three other options were outlined in the preamble and comments were specifically requested on all three options.

The proposed rulemaking provided for a 30-day public comment period which ended May 11, 1989. Six commenters (five industry and one State) submitted comments during the comment period which are addressed in this section. No comments were received from Indian representatives.

One commenter expressed concern that the proposed rule, with respect to payments to Indians, does not comport with the wording of section 111(c) of FOGRMA, 30 U.S.C. 1721(c), when the Indian lessee is charged interest for failure to timely pay the correct amount of royalty on an Indian lease. (Section 111(c) of FOGRMA requires that all interest charges collected under FOGRMA or under other applicable laws because of late payment of royalties due and owing an Indian tribe or an Indian allottee must be deposited in the same account as the royalty payments on the lease).

Response: This comment did not address the correct issue addressed in the proposed rule. The proposed rule did not purport to alter the existing practice, which is in accordance with section 111(c) of FOGRMA, that interest charges collected on payments from Indian leases be deposited in the same Treasury account as the royalty payment.

Another commenter stated that MMS's attempt to justify its proposal on the grounds that it is a "service" entity acting as a passive "conduit for funds" is not supportable. This commenter stated further that the fact that MMS is "burdened with the administrative costs necessary to clear and process the funds" is irrelevant to the issue of its interest obligation.

The State commenter agreed with MMS's proposal to charge lessees and other payors at the higher underpayment rate (section 6621(a)(2)). However, this commenter argued that there is no basis under statute, legislative history, MMS practice, or simple logic that supports the proposal to compute the interest owed to the States at the lower rate (section 6621(a)(1)).

Response: As explained more fully below, the concerns of this commenter are resolved by the final rule, which provides that the higher underpayment rate in section 6621(a)(2) be applied uniformly under FOGRMA sections 111 (a), (b) and (d).

One commenter, opposing the proposed interest rate on charges to lessees and royalty payors, stated that lessees/payors should not be required to subsidize MMS administrative costs through interest charges. The commenter also stated that lessees/payors should not pay interest that is not shared with the States and Indians.

Response: Regardless of the interest rate, there is no subsidy for MMS. Any interest collected for onshore Federal leases is shared with the States or other recipients in the same proportion as the royalties collected for those leases. All other interest revenues, including interest payments owed on Federal offshore leases, are deposited into U.S. Treasury accounts, and do not result in an increase in MMS's budget.

Most commenters recommended the use of a single interest rate that was most advantageous to them. The industry commenters stated that a lower interest rate was sufficient to discourage the withholding of payments to MMS. Four of the industry commenters recommended the lower overpayment rate provided by section 6621(a)(1) of IRC. Another industry commenter recommended that the single rate be the rate specified in section 6621 of IRC on the date that FOGRMA was enacted. This commenter argued that there is nothing in the Tax Reform Act (TRA) of 1986 or its legislative history to suggest that Congress intended to modify FOGRMA as the result of modifications of IRC. In this commenter's opinion, any changes to FOGRMA governing interest rates is a subject that should be considered by Congress rather than by MMS.

Response: The MMS agrees that there is no reason to believe Congress intended to modify FOGRMA through the TRA of 1986. The rate for refunds of overpayments of the amended section 6621 is 1 percentage point lower than the rate prescribed by section 6621 prior to amendment. Thus, if this rate were applied to FOGRMA interest collections, the interest assessment would be less than it was prior to the amendment. This is not consistent with Congress' purpose. Furthermore, the amount of payor assessed interest collected by MMS (more than $25 million in FY 1989) casts doubt on industry's assertion that a lower rate would be sufficient to discourage late payments of royalty. Maintaining the higher rate formula specified in section 6621 on the date FOGRMA was enacted is most consistent with FOGRMA's terms. The FOGRMA still refers to "the rate applicable" under section 6621, so the rate will generally change with changes in interest rates.

One commenter expressed an opinion that MMS should pay interest to lessees on refunds of royalty overpayments just as it assesses interest on a late royalty payment by the lessee.

Response: The MMS does not have statutory authority to pay interest on refunds of royalty overpayments. With respect to onshore leases, no statute authorizes MMS to pay interest on refunds. With respect to offshore leases, section 10 of the Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1339, specifically states that authorized refunds of excess payments shall be repaid without interest.

III. Rule Adopted

After consideration of comments received on the proposed rulemaking, MMS is adopting a single rate for application in both situations. This final rule amends 30 CFR 218.54, 218.55, and 218.103 to provide that the higher rate in IRC 6621(a)(2) will apply uniformly to late payments of monies due to MMS pursuant to FOGRMA section 111(a) and also to late disbursements to the States and Indians pursuant to FOGRMA section 111 (b) and (d).

The change in MMS's position is the result of MMS's concurrence with arguments presented by several commenters. First, FOGRMA's intent was that States and Indians are entitled to receive the same interest rate on the payments that they received late from MMS as the interest rate that MMS receives on late payments from lessees and other payors. Second, there is no indication that Congress intended to modify FOGRMA, which was passed when "the rate applicable" was the short-term Federal rate plus 3 percentage points.

The adoption of the higher underpayment rate provided under IRC 6621(a)(2) for late disbursements to the States and Indians is a change from MMS's existing practice. See paragraph IV below of this preamble for a discussion of the effective date of this final rule.

As stated in the Notice of Proposed Rulemaking, regulations governing solid mineral and geothermal resource leases provide for late payment charges to be calculated on the basis of a percentage assessment rate. In the absence of a specific lease, permit, license, or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the "Treasury Current Value of Funds Rate." See 30 CFR 218.202(c) and 30 CFR 218.301(c). Because the interest rate provided for in section 6621 does not apply to solid mineral or geothermal resource leases, this rulemaking does not apply to solid mineral or geothermal resource leases.

The adopted rule also includes an administrative amendment to subpart B of 30 CFR part 218 to remove the authority citation included therein. The authority citation for part 218 is included directly after the table of contents and before the regulatory text and therefore is not required under the subpart.

IV. Effective Date of Final Rule

The MMS will begin paying interest to the States and Indians at the higher underpayment rate established in IRC 6621(a)(2) beginning with disbursements made during the second month following the date of publication of this final rule in the Federal Register. At that time, the States and Indians will begin receiving a 1 percentage point increase in the rate of interest from MMS on its late disbursement of royalties and other monies.

IV. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The sole effect of the rulemaking is a small increase of approximately $10,000 annually in the amount of interest paid to the States and Indians by MMS on its late disbursements of royalty revenues. Therefore, the Department has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12630

This rulemaking clarifies an ambiguity in existing regulations and will result in an increase in interest paid by MMS to the States and Indians. There is no change in the interest rate paid by lessees and other payors for late

payment of interest. Therefore, the Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Paper Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action signficantly affecting the quality of the human environment; therefore, a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 218

Coal, Continental shelf, Electronic funds transfer, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: July 26, 1990.

James M. Hughes,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 218 is amended as set forth below:

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for part 218 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

Subpart B—[Amended]

2. Subpart B—Oil and Gas, General is amended by removing the authority citation following the subpart heading.

3. Section 218.54 under Subpart B—Oil and Gas, General is amended by revising the section heading and paragraph (b) to read as follows:

§ 218.54 Late payments.

* * * * *

(b) The interest charge on late payments shall be at the underpayment rate established by the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (Supp. 1987).

* * * * *

4. Paragraph (c) of § 218.55 under subpart B—Oil and Gas, General is revised to read as follows:

§ 218.55 Interest payments to Indians.

* * * * *

(c) Interest shall be computed at the underpayment rate established by the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (Supp. 1987).

* * * * *

5. Paragraph (b) of § 218.103 under subpart C (Oil and Gas, Onshore) is revised to read as follows:

§ 218.103 Payments to States.

* * * * *

(b) Interest shall be computed at the underpayment rate established by the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (Supp. 1987).

* * * * *

[FR Doc. 90-21076 Filed 9-7-90; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3827-9]

RIN 2060-AC68

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Chemical Manufacturing Process Vents, Industrial Solvent Use, Benzene Waste Operations, Benzene Transfer Operations, and Gasoline Marketing System; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects errors and makes clarifications in the regulatory text of the final rule on National Emission Standard for Benzene Waste Operations which appeared in the Federal Register on March 7, 1990 (55 FR 8292).

EFFECTIVE DATE: March 7, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Janet Meyer at (919) 541-5254, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: On March 7, 1990 (55 FR 8292), EPA promulgated regulations limiting benzene emissions from benzene waste operations and benzene transfer operations. A few editorial corrections to clarify the intent of the National Emission Standard for Benzene Waste Operations are being made by this document.

Inquiries have been received requesting clarification of the applicability of the benzene waste operations standard to facilities that treat, store, or dispose of benzene wastes generated by chemical plants, coke by-product recovery plants, or petroleum refineries. The applicability section of the rule, as written, inadvertently applies more broadly than the intent expressed in the preamble to the rule (March 7, 1990, 55 FR 8292) or in the December 15, 1989, **Federal Register** notice of clarification of the proposed rule (54 FR 51423). Therefore, paragraph (b) of § 61.340 is being revised: (1) To clarify that the subpart applies to offsite hazardous waste treatment, storage, and disposal facilities (TSDF) which are facilities that must obtain a hazardous waste management permit under subtitle C of the Solid Waste Disposal Act and (2) to clarify that the rule only applies to benzene-containing wastes. It should be noted that recent revisions to 40 CFR part 261, the toxicity characteristic (March 29, 1990, 55 FR 11798), will require most facilities receiving wastes with greater than 0.5 parts per million (ppm) benzene to be permitted as hazardous waste TSDF. The primary effects of the correction are to clarify that the rule does not apply to hazardous wastes from other industries and the rule generally does not apply to publicly owned treatment works and municipal solid waste landfills.

An editorial correction is being made to paragraph (b)(2)(ii)(A) of § 61.346 to clarify that the example location for water seal control is on the junction box rather than on the junction box vent pipe. This clarification is being made to prevent possible misinterpretations of the alternative standard for individual drain systems. This alternative standard is applicable only in those cases where there are no routine changes in liquid level in the junction box and no flow from the junction box vent pipe. Paragraph (b)(2)(ii)(B) of § 61.348 is being modified to clarify the meaning of enhanced biodegradation and to make the rule consistent with the information used as a basis for the final rule.

Also paragraph (a) of § 61.357 is being modified to clarify the objectives and to clarify what information is required in the initial report. Many inquiries have been received regarding the required accuracy of the waste quantity and concentration estimates, the possibility of amending the initial report, and the need for inclusion of a description of the controls to be installed and a compliance schedule. Because EPA specifically provided up to 2 years for compliance with the control requirements of the standard, the purpose of the initial report is to identify facilities subject to the control requirements, to identify which streams must be controlled, and to provide the basis for exemption of streams. The initial report should represent the owner's or operator's best estimate of the waste stream characteristics based on existing information and current configuration and operating conditions. This report may then be updated as new information becomes available or as conditions change. Consequently, a new paragraph (4) is being added to § 61.357 (a) to clarify what information is required in the initial report. This change does not alter the control requirements or the reporting requirements. Paragraph (b) of § 61.357 is being corrected to require that facilities with less than 1 megagram/year benzene waste file updated reports when the waste quantity increases to 1 megagram/year or more. This correction is consistent with the intent to require annual reporting for all facilities with 1 to 10 megagrams/year of benzene waste.

Finally, EPA would like to note that owners and operators of facilities subject to NESHAP should consult the general provisions (subpart A) of part 61 whenever there are questions regarding the applicability or the implementation of a standard. In this section, general requirements regarding source reporting, waivers, and emission testing are presented. Section 61.04 requires that all communications, including all requests, reports, and applications, be submitted in duplicate to the appropriate Regional Office of EPA and to the State agency, if the authority to implement the standard has been delegated. Section 61.04 provides a list of addresses for the Regional Offices and for State agencies that have been delegated authority to enforce NESHAP.

Dated: August 27, 1990.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

The following corrections are being made in FRL 3706–1; National Emission Standards for Hazardous Air Pollutants; Benzene Emissions from Chemical Manufacturing Process Vents, Industrial Solvent Use, Benzene Waste Operations, Benzene Transfer Operations, and Gasoline Marketing System published in the **Federal Register** on March 7, 1990 (55 FR 8292).

1. Paragraph (b) of § 61.340 on page 8346, column 3, is revised to read as follows:

§ 61.340 Applicability.

* * * * *

(b) The provisions of this subpart apply to owners and operators of hazardous waste treatment, storage, and disposal facilities that treat, store, or dispose of hazardous waste generated by any facility listed in paragraph (a) of this section. The waste streams at hazardous waste treatment, storage, and disposal facilities subject to the provisions of this subpart are the benzene-containing hazardous waste from any facility listed in paragraph (a) of this section. A hazardous waste treatment, storage, and disposal facility is a facility that must obtain a hazardous waste management permit under Subtitle C of the Solid Waste Disposal Act.

* * * * *

§ 61.346 [Corrected]

2. In paragraph (b)(2)(ii)(A) of § 61.346 on page 8350, column 2, line 6, remove "includes use of water seal controls." and add "includes use of water seal controls on the junction box."

§ 61.348 [Corrected]

3. In paragraph (b)(2)(ii)(B) of § 61.348 on page 8351, Column 2, revise the last sentence to read "A unit shall be considered enhanced biodegradation if it is a suspended-growth process that generates biomass, uses recycled biomass, and periodically removes biomass from the process. An enhanced biodegradation unit typically operates at a food-to-microorganism ratio in the range of 0.05 to 1.0 kg of biological oxygen demand per kg of biomass per day, a mixed liquor suspended solids ratio in the range of 1 to 8 grams per liter, and a residence time in the range of 3 to 36 hours."

§ 61.349 [Corrected]

4. In paragraph (a)(2)(i)(B) of § 61.349 on page 8352, column 1, in line 2, remove "concentration of 20 ppmv" and add "concentration of 20 ppmv (as compound by Method 18)".

§ 61.351 [Corrected]

5. In paragraph (a)(2) of § 61.351 on page 8352, column 3, line 2, remove "40 CFR 60.112(a)(2)" and add "40 CFR 60.112b(a)(2)."

§ 61.355 [Corrected]

6. In paragraph (a)(1) of § 61.355 on page 8353, column 3, in line 4 remove "than 10 percent water," and add "than 10 percent water, on a volume basis as total water,".

7. In § 61.357 on page 8360, column 1, is amended by adding paragraph (a)(4) as follows:

§ 61.357 Reporting requirements.

(a) * * *

(4) This information should present the owner's or operator's best estimate of the waste stream characteristics based on existing information and current configuration and operating conditions. An owner or operator only needs to list in the report those waste streams that contact materials containing benzene. The report does not need to include a description of the controls to be installed to comply with the standard or other information required in § 61.10(b) of this part. The owner or operator should update and resubmit the report to the Administrator when new information becomes available. Instances where resubmittal of the report would be appropriate include cases where results from surveys of waste stream characteristics become available after June 5, 1990, and cases where the process is redesigned such that the facility waste characteristics could be changed before the March 7, 1992, compliance date.

* * * * *

§ 61.357 [Corrected]

8. In paragraph (b) of § 61.357, on page 8360, column 1, line 26, remove "10 Mg/yr" and add "1 Mg/yr."

[FR Doc. 90–20978 Filed 9–7–90; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 228

[FRL–3828–8]

Ocean Dumping; Designation of a Site Located Offshore of Port Mansfield, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates a dredged material disposal site located in the Gulf of Mexico offshore of Port Mansfield, Texas for the continued disposal of dredged material removed from the Port Mansfield Entrance Channel. This action is necessary to

provide an acceptable ocean dumping site for the current and future disposal of this material. This final site designation is for an indefinite period of time. The site is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATES: This designation shall become effective October 10, 1990.

ADDRESSES: Norm Thomas, Chief, Federal Activities Branch (6E–F), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733.

The file supporting this designation and the letters of comment are available for public inspection at the following locations:

EPA, Region 6, 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202

Corps of Engineers, Galveston District, 444 Barracuda Avenue, Galveston, Texas 77550.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655–2260 or FTS/255–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, section 228.4) state that ocean dumping sites will be designated by publication in part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established a site off Port Mansfield, Texas as an interim site for the disposal of material dredged from the entrance channel. In January 1980, the interim status of the site was extended indefinitely.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA has prepared a Final Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Port Mansfield Ocean Dredged Material Disposal Site Designation." On July 13, 1990, a notice of availability of the Final EIS for public review and comment was published in the Federal Register. The public comment period on this Final EIS closed on August 13, 1990. No comment letters were received.

In accordance with the requirements of section 7 of the Endangered Species Act, EPA has prepared a biological assessment concerning the impact of site designation on endangered and threatened species that may be present in the project area. EPA has determined that no adverse effect will result and has provided its determination and assessment to the National Marine Fisheries Service (NMFS). By letter dated August 17, 1990, NMFS concurred with EPA's determination of no adverse effect.

The action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis.

The EIS discussed the need for the action and examined ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS prepared by the Corps of Engineers and the analysis was updated in this Final EIS. The COE concluded that there was no nearby land area suitable for use as a disposal site and that the costs of transport to any suitable upland area were uneconomical. This would require the acquisition of new areas. Since the surrounding land areas are wetlands or shallow bay habitats, development and use of a suitable sized replacement area would result in a significant loss of quality wetlands or bay bottoms. A land-based alternative would offer no environmental benefit to ocean disposal.

Four ocean disposal alternatives—two nearshore sites (*i.e.*, the interim-designated site and the proposed site), a mid-shelf site and a deepwater site—were evaluated. Both the mid-shelf and deepwater sites were eliminated due to limited feasibility for monitoring, increased transportation costs and increased safety risks. In addition the material to be dredged is of a different sediment type than that found further offshore, which could impact the biological community composition at these areas.

Portions of the interim-designated site are within the jetty buffer zone and the beach buffer zone. Therefore, the interim-designated site is not being designated. The new disposal site was selected to comply with areas of biological sensitivity and the beach and jetty buffer zones and to keep the disposal site in the nearshore sand habitat, as close to the channel as possible.

This final rulemaking notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On August 7, 1989, at (54 FR 32354) EPA proposed designation of this site for the continuing disposal of dredged materials from the Port Mansfield Entrance Channel. The public comment period on this proposed action closed on September 21, 1989. One comment letter was received from the Department of the Interior (DOI). DOI expressed concern about the dredged material being transported to and ultimately deposited within the boundaries of the Padre Island National Seashore or the Mansfield Cut Underwater Archeological District. DOI recommended that the monitoring plan include confirmation of sediment movement and offered assistance in development of this facet of the plan. EPA will contact the Superintendent of the Padre Island National Seashore during development of the monitoring plan.

The site is located approximately 1.1 miles from the coast at its closest point. The water depth at the site ranges from 35 to 50 feet. The coordinates of the rectangular-shaped site are as follows: 26°34′24″ N., 97°15′15″ W.; 26°34′26″ N., 97°14′17″ W.; 26°33′57″ N., 97°14′17″ W.; 26°33′55″ N., 97°15′15″ W. If at any time disposal operations at the site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the

Continental Shelf are chosen. If at any time disposal operations at an interim site cause unacceptable adverse impacts, the use of that site will be terminated as soon as alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a disposal site to assure that the general criteria are met.

The site, as discussed below under the eleven specific factors, is acceptable under the five general criteria. EPA has determined, based on the information presented in the Final EIS, that a site off the Continental Shelf is not feasible due to monitoring difficulties, increased transportation costs and greater safety risks. No environmental benefit would be obtained by selecting such a site. The characteristics of the selected site are reviewed below in terms of the eleven factors.

1. Geographical Position, Depth of Water, Bottom Topography and Distance From Coast (40 CFR 228.6(a)(1))

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography is flat with no unique features or relief.

2. Location in Relation to Breeding, *Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases* (40 CFR 228.6(a)(2))

Breeding, spawning, nursery, feeding, and passage areas in the project area were identified during the siting feasibility process and eliminated from consideration. There is an area of snapper banks and sports fishing which is excluded, including a one-mile buffer zone. The jetties, including a one-mile buffer zone, are excluded as a fishing area and as a migratory pathway. Also excluded were lighted platforms and non-submerged shipwrecks which improve fishing.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3))

The site is located more than 0.8 mile from any beach or other amenity area.

4. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Wastes, If Any (40 CFR sec. 228.6(a)(4))

Only maintenance material from the Port Mansfield Entrance Channel will be disposed. Historically, an average of 170,000 cy/yr has been dredged from the channel at roughly 15-month intervals. This material has historically been transported by hopper dredges but could be transported by pipeline. Based on chemical anaylses and biological toxicity studies of past maintenance material, it was concluded that no special location or precautions would be necessary for the disposal of the dredged materials.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

The site is amenable to surveillance and monitoring. A monitoring and surveillance program, consisting of water, sediment and elutriate chemistry; bioassays; bioaccumulation studies; and benthic infaunal analyses, is proposed for the Port Mansfield site.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, If Any (40 CFR 228.6(a)(6))

Physical oceanographic parameters including dispersal, horizontal transport and vertical mixing characteristics were used: (1) to develop the necessary buffer zones for the siting feasibility analysis, and (2) to determine the minimum size of the site. Predominant longshore currents, and thus predominant longshore transport, is to the north. Long-term mounding has not historically occurred. Therefore, steady longshore transport and occasional storms, including hurricanes, remove the disposed material from the site.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 2289.6(a)(7))

Based on the results of chemical and bioassay testing of past maintenance material and material from the existing disposal site plus chemical analyses of water from the area, there are no indications of water or sediment quality problems. Testing of past maintenance material indicated that it was acceptable for ocean disposal under 40 CFR part 227. Studies of the benthos at the interim-designated site and nearby areas have not indicated any significant decrease or change in composition of the benthos at the disposal site.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))

Impacts to shipping, ineral extraction, commercial and recreational fishing, recreational areas and historic sites have been evaluated for the Port Mansfield site designation. Use of the site should not interfere with these and other legitimate uses of the ocean because the siting feasibility process was designed to reduce the possibility of a site which would interfere. Disposal operations in the past have not interfered with other uses.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))

Monitoring studies have shown only short-term water-column perturbations of turbidity, and perhaps increased chemical oxygen demand (COD), which resulted from disposal operations. No short-term sediment quality perturbation has been directly related to disposal operations. In general, the water and sediment quality is good throughout the disposal area and there have been no long-term adverse impacts on water and sediment quality from disposal operations. In addition there has been no long-term impacts on the benthos at the interim-designated site.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

With disturbance to any benthic community, initial recolonization will be by opportunistic species. However, these species are not nuisance species in the sense that they would interfere with other legitimate uses of the ocean or that they are human pathogens. Continued disposal of maintenance material at the site should not attract nor promote the development or recruitment of nuisance species.

11. Existence At or In Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)(11))

Areas and features of historical importance were evaluated during the siting feasibility process. The nearest site of historical importance is located near the jetties, approximately 0.85 miles from the closest edge of the disposal site. Use of the site would not impact any known historical or cultural sites.

E. Action

The EIS concludes that the site may appropriately be designated for use. The site is compatible with the five general criteria and eleven specific factors used for site evaluation. The designation of the Port Mansfield site as an EPA approved ocean dumping site is being published as final rulemaking.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may occur, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean

dumping. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredge material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: August 27, 1990.

Robert E. Layton Jr., P.E.,

Regional Administrator of Region 6.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. Sections 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Port Mansfield Channel and adding paragraph (b)(80) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(80) Port Mansfield, Texas—Region 6.

Location: 26°34'24"N., 97°15'15" W.; 26°34'26" N., 97°14'17" W.; 26°33'57" N., 97°14'17" W.; 26°33'55" N., 97°15'15" W.
Size: 0.42 square nautical miles.
Depth: Ranges from 35–50 feet.
Primary Use: Dredged material.
Period of Use: Indefinite period of time.
Restriction: Disposal shall be limited to dredged material from the Port Mansfield Entrance Channel, Texas.

* * * * *

[FR Doc. 90–21163 Filed 9–7–90; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 228

[FRL 3828–7]

Ocean Dumping: Designation of a Site Located Offshore of Port O'Connor, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates a dredged material disposal site located in the Gulf of Mexico offshore of Port O'Connor, Texas for the continued disposal of dredged material removed from the Matagorda Ship Channel. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This final site designation is for an indefinite period of time. The site is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

EFFECTIVE DATE: This designation shall become effective October 10, 1990.

ADDRESSES: Norm Thomas, Chief, Federal Activities Branch (6E–F), U.S. EPA, 1445 Ross Avenue, Dallas, TX 75202–2733.

The file supporting this designation and the letters of comment are available for public inspection at the following locations: EPA, Region 6, 1445 Ross Avenue, Ninth Floor, Dallas, Texas 75202.

Corps of Engineers, Galveston District, 444 Barracuda Avenue, Galveston, Texas 77550.

FOR FURTHER INFORMATION CONTACT: Norm Thomas, 214/655–2260 or FTS/255–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the Matagorda Ship Channel site as an interim site for the disposal of material dredged from the entrance channel. In January 1980, the interim status of the site was extended indefinitely.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA"), requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA has prepared a Final Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Matagorda Ship Channel Ocean Dredged Material Disposal Site Designation." On July 13, 1990, a notice of availability of the Final EIS for public review and comment was published in the **Federal Register**. The public comment period on this Final EIS closed on August 13, 1990. No comment letters were received.

In accordance with the requirements of section 7 of the Endangered Species Act, EPA has prepared a biological assessment concerning the impact of site designation on endangered and threatened species that may be present in the project area. EPA has determined that no adverse effect will result and has provided its determination and assessment to the National Marine Fisheries Service (NMFS). By letter dated August 17, 1990, NMFS concurred with EPA's determination of no effect.

The action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis. The EIS discussed the need for the action

and examined ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS prepared by the Corps of Engineers and the analysis was updated in this Final EIS. The nearest available land disposal area is 100 acres in size and is located 3 miles away from the seaward end of the project. Because of the high costs of transport as well as the limited capacity of the area, this alternative is not feasible. Also since the surrounding land areas are wetlands or shallow bay habitats, development and use of a suitable sized replacement area would result in a significant loss of quality wetlands or bay bottoms. A land-based alternative would offer no environmental benefit to ocean disposal.

Four ocean disposal alternatives—two nearshore sites (i.e., the interim-designated site and the proposed site), a mid-shelf site and a deepwater site—were evaluated. Both the mid-shelf and deepwater sites were eliminated due to limited feasibility for monitoring, increased transportation costs and increased safety risks. In addition the material to be dredged is of a different sediment type than that found further offshore, which could impact the biological community composition at these areas.

Portions of the interim-designated site are within the jetty buffer zone and the beach buffer zone. Therefore, the interim-designated site is not being designated in its entirety. The new disposal site includes much of the area of historical impact of the interim site but excludes the two buffer zones referenced above.

This final rulemaking notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On August 7, 1989, at (54 FR 32356) EPA proposed designation of this site for the continuing disposal of dredged materials from the Matagorda Ship Channel. The public comment period on this proposed action closed on September 21, 1989. No comment letters were received.

The site is located approximately 1.5 miles from the coast at its closest point. The water depth at the site ranges from 25 to 40 feet. The coordinates of the rectangular-shaped site are as follows: 28°24′ 10″ N., 96°18′ 23″ W.; 28° 23′ 33″ N., 96°17′ 45″ W.; 28° 23′ 05″ N., 96°18′ 15″ W.; 28° 23′ 43″ N., 96°18′ 54″ W. If at any time disposal operations at the site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at an interim site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternative disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a disposal site to assure that the general criteria are met.

The site, as discussed below under the eleven specific factors, is acceptable under the five general criteria. EPA has determined, based on the information presented in the Final EIS, that a site off the Continental Shelf is not feasible due to monitoring difficulties, increased transportation costs and greater safety risks. No environmental benefit would be obtained by selecting such a site. The characteristics of the selected site are reviewed below in terms of the eleven factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* [40 CFR 228.6(a)(1).]

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography is flat with no unique features or relief.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* [40 CFR 228.6(a)(2).]

Breeding, spawning, nursery, feeding, and passage areas in the project area were identified during the siting feasibility process and eliminated from consideration. Also excluded were lighted platforms and non-submerged shipwrecks which improve fishing.

3. *Location in relation to beaches and other amenity areas.* [40 CFR 228.6(a)(3).]

The site is approximately 1.5 miles from beaches and other amenity areas such as the Matagorda Island National Seashore.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* [40 CFR 228.6(a)(4).]

Only maintenance material from the Matagorda Ship Channel will be disposed. Historically, an average 795,000 cy/yr has been dredged from the channel at roughly 12-month intervals. This material has historically been transported by hopper dredges but could be transported by pipeline. Based on chemical analyses and biological toxicity studies of past maintenance material, it was concluded that no special location or precautions would be necessary for the disposal of the dredged materials.

5. *Feasibility of surveillance and monitoring.* [40 CFR 228.6(a)(5).]

The site is amenable to surveillance and monitoring. A monitoring and surveillance program, consisting of water, sediment and elutriate chemistry; bioassays; bioaccumulation studies; and benthic infaunal analyses, is proposed for the Matagorda Ship Channel site.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* [40 CFR 228.6(a)(6).]

Physical oceanographic parameters including dispersal, horizontal transport and vertical mixing characteristics were used: (1) To develop the necessary buffer zones for the siting feasibility analysis; and (2) To determine the minimum size of the site. Predominant longshore currents, and thus predominant longshore transport, is to the southwest. Long-term mounding has not historically occurred. Therefore, steady longshore transport and occasional storms, including hurricanes, remove the disposal material from the site.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* [40 CFR 228.6(a)(7).]

Based on the results of chemical and bioassay testing of past maintenance material and material from the existing disposal site plus chemical analyses of water from the area, there are no indications of water or sediment quality problems. Testing of past maintenance material indicated that it was acceptable for ocean disposal under 40 CFR part 227. Studies of the benthos at the interim-designated site and nearby areas have indicated that the composition of the benthos is different from that in nearby "natural bottom" areas. This difference in benthos composition is due primarily to the fact that the substrate at the interim-designated site is much coarser than the "natural bottom". Therefore, the

disposal site is located to take advantage of the fact that the nearshore substrate is coarser than that further offshore and to include as much of the interim-designated site as possible.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* [40 CFR 228.6(a)(8).]

Impacts to shipping, mineral extraction, commercial and recreational fishing, recreational areas and historic sites have been evaluated for the Matagorda Ship Channel site designation. The site should not interfere with these and other legitimate uses of the ocean because the siting feasibility process was designed to reduce the possibility of a site which would interfere. Also, disposal operations in the past have not interfered with other uses.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* [40 CFR 228.6(a)(9).]

Monitoring studies have shown only short-term water-column perturbations of turbidity, and perhaps increased chemical oxygen demand (COD), which resulted from disposal operations. No short-term sediment quality perturbation, except grain size, have been directly related to disposal operations. In general, the water and sediment quality is good throughout the disposal area and there have been no long-term adverse impacts on water and sediment quality from disposal operations. However, there has been a long-term impact on the grain size, and thus, on the benthos at the interim-designated site.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* [40 CFR 228.6(a)(10).]

With disturbance to any benthic community, initial recolonization will be by opportunistic species. However, these species are not nuisance species in the sense that they would interfere with other legitimate uses of the ocean or that they are human pathogens. Continued disposal of maintenance material at the site should not attract nor promote the development or recruitment of nuisance species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* [40 CFR 228.6(a)(11).]

Areas and features of historical importance were evaluated during the siting feasibility process. The nearest site of historical importance is located northeast of the channel or up-current of the site. Therefore, use of the site would not adversely impact any known site of historical importance.

E. Action

The EIS concludes that the site may appropriately be designated for use. The site is compatible with the five general criteria and eleven specific factors used for site evaluation. The designation of the Matagorda Ship Channel site as an EPA approved ocean dumping site is being published as final rulemaking.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may occur, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: August 27, 1990.

Robert E. Layton, Jr.,

Regional Administrator of Region 6.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. sec. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Matagorda Ship Channel and adding paragraph (b)(79) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(79) Matagorda Ship Channel, Texas—Region 6.

Location: 28°24'10" N., 96°18'23" W.; 28°23'33" N., 96°17'45" W.; 28°23'05" N., 96°18'15" W.; 28°23'43" N., 96°18'54" W.

Size: 0.56 square nautical miles.

Depth: Ranges from 25–40 feet.

Primary Use: Dredged material.

Period of Use: Indefinite period of time.

Restriction: Disposal shall be limited to dredged material from the Matagorda Ship Channel, Texas.

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[FR Doc. 90–21161 Filed 9–7–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–447; RM–6848]

Radio Broadcasting Services; Coushatta, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of James G. Bethard, substitutes Channel 235C3 for Channel 222A at Coushatta, Louisiana and modifies his construction permit for Station KSBH to specify operation on the higher class channel. *See* 54 FR 42523, October 17, 1989. Channel 235C3 can be allotted to Coushatta in compliance with the Commission's minimum distance

separation requirements and can be used at the transmitter site specified in Station KSBH's construction permit. The coordinates for Channel 235C3 at Coushatta are 31–56–49 and 93–20–13. The comments of Oakdale Limited Partnership requesting the allotment of Channel 254C1 to Oakdale, Louisiana, will be the subject of a separate Notice of Proposed Rule Making (RM–7250). With this action, this proceeding is terminated.

DATES: Effective October 22, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–447, adopted August 7, 1990, and released September 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Louisiana by removing Channel 222A and adding Channel 235C3 at Coushatta.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–21172 Filed 9–7–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–381; RM–6739]

Radio Broadcasting Services; Amarillo, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Amarillo Community Broadcasting Company, allots Channel 265C1 to Amarillo, Texas, as its eighth local FM service. *See* 54 FR 37702, September 12, 1989. Channel 265C1 can be allotted to Amarillo in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 265C1 at Amarillo are North Latitude 35–12–30 and West Longitude 101–50–00. With this action, this proceeding is terminated.

DATES: Effective October 22, 1990; The window period for filing applications will open on October 23, 1990, and close on November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the claimant's Report and Order, MM Docket No. 89–381, Commission's adopted August 21, 1990, and released September 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Texas by adding Channel 265C1 at Amarillo.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–21173 Filed 9–7–90; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 55, No. 175
Monday, September 10, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 997

[Docket No. FV-90-146PR]

Proposed Inspection, Disposition and Minimum Quality Requirements Applicable to Domestically Produced Peanuts Not Subject to the Peanut Marketing Agreement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a new part 997 which would require all domestically produced peanuts handled by persons who have not entered into the Peanut Marketing Agreement (Agreement) to be inspected to the same extent and same manner as is required under the Agreement. This proposal would also require said peanuts, when destined for human consumption outlets, to meet the same minimum requirements as those specified under the Agreement. Peanut handlers not subject to the Agreement would also be required to comply with reporting and disposition requirements similar to those in effect under the Agreement for peanuts failing to meet minimum edible quality requirements. These proposed requirements for peanuts not handled under the Agreement are established pursuant to section 608(b) of the Agricultural Marketing Agreement Act of 1937. The proposal is intended to insure that all peanuts are inspected for size, quality and condition in addition to being chemically tested for aflatoxin to ensure that only wholesome peanuts of good quality enter edible markets channels.

DATE: Comments must be received by October 10, 1990.

ADDRESSES: Written comments concerning this proposed rule should be submitted in triplicate to the Docket Clerk, Fruit and Vegetable Division, Agriculture Marketing Service, USDA, P.O. Box 2525–S, Washington, DC 20090–6456. All comments submitted will be available for public inspection during regular business hours. Comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Patrick A. Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2530–S, Washington, DC 20090–6456, telephone: 202–475–3862.

SUPPLEMENTARY INFORMATION: This rule is proposed pursuant to requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and as further amended December 12, 1989, Public Law 101–220 sections 4 (1), (2), 103 Stat. 1878. hereinafter referred to as the "Act".

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businessess will not be unduly or disproportionately burdened.

There are approximately 40 handlers of peanuts who have not signed Agreement and thus, would be subject to the proposed regulations contained herein. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts less than $3,500,000. It is estimated that these 40 handlers may be handling up to five percent of the crop. Peanut production in 1989 totalled 4,030 million pounds. Five percent of this production would amount to about 202 million pounds of farmers' stock peanuts. The 202 million pounds of farmers' stock peanuts would yield about 152 million pounds of kernels. If this quantity was distributed among the 40 handlers, the average quantity per handler would be about 3.788 million pounds. Based on recent market information the average price of shelled peanuts is about 54 cents per pound. This would bring the average value of peanuts handled annually by each of the 40 handlers to approximately $2.045 million. Thus, most of these handlers would be small entities. Most producers doing business with these handlers would also be small entities. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $500,000.

There are three major peanut production areas in the United States: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest. These areas encompass 16 states. The Virginia-Carolina area (primarily Virginia and North Carolina) usually produces about 18 percent of the total U.S. crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest area (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop.

Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. The Agreement plays a very important role in the industry's quality control efforts. It has been in place since 1965. Approximately 95 percent of 1988 crop peanuts were marketed by handlers signatory to the Agreement.

Requirements established pursuant to the Agreement require farmers' stock peanuts with visible *Aspergillus Flavus* mold (the principal producer of aflatoxin) to be diverted to non-edible uses.

Each lot of shelled peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the U.S. Department of Agriculture (Department) or in laboratories approved by the Peanut Administrative Committee (Committee) established under the Agreement. The Committee works with the Department in administering the marketing agreement program. The inspection and chemical analysis programs are administered by the Department.

Public Law 101–220, enacted December 12, 1989, amended section 608(b) of the Act to require all peanuts handled by persons who have not entered into the Agreement (non-signers) to be subject to quality and inspection requirements to the same

extent and manner as are required under the Agreement. Under the amendment, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the quality requirements of the Agreement. Violation of the requirements promulgated pursuant to Public Law 101–220 may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the support price for quota peanuts, as determined under section 108b of the Agricultural Act of 1949 (7 U.S.C. 1445C–2), for the marketing year for the crop with respect to which such violation occurs. The intent of Public Law 101–220 and the objective of the agreement is to insure that only wholesome peanuts of good quality enter edible market channels. Peanuts are produced in many localities under varying weather conditions and using different cultural practices. This means various qualities of peanuts are delivery by producers, milled by handlers, and offered for human consumption. Some peanuts contain defects, including *Aspergillus Flavus* mold (the principal producer of aflatoxin), or other damage which causes them to be of low value, poor taste, or unwholesome. Lots of peanuts with significant amounts of such damage adversely affect demand for peanuts, and their sale is not in the public interest. Further, it is felt that even an isolated quality problem could be detrimental to the entire industry.

This proposed rule would implement minimum quality regulations, inspection, certification, identification and disposition requirements deemed necessary to achieve the desired goal of Public Law 101–220. Such requirements, in accordance with Public Law 101–220, are the same as those in effect under the Agreement. Whenever the regulations specified in the Agreement are changed the regulations hereinafter proposed to be added as 7 CFR part 997 would be adjusted, as appropriate, to reflect such changes. Reporting and recordkeeping requirements necessary to ensure and check compliance with quality regulations would also be implemented.

This proposed rule would establish both incoming and outgoing quality regulations. The incoming regulations would specify the quality of farmers' stock peanuts, intended for human consumption, which handlers may purchase from producers. Handlers would be required to purchase only good quality, wholesome peanuts for use in edible products. Peanuts with visible *Aspergillus Flavus* mold would be required to be diverted to non-edible uses. The proposed incoming regulations, specifying the quality of peanuts for milling or cleaning into shelled peanuts or cleaned in-shell peanuts for human consumption, are necessary to lessen the chances of defective peanuts being commingled with deliveries of sound peanuts. It is difficult and expensive to separate defective peanuts from sound peanuts once they have been commingled. The incoming regulations contain handling procedures and reporting requirements for non-edible peanuts intended for use as seed peanuts or oilstock. These procedures and requirements are designed to prevent such peanuts from being used for human consumption. Hence, the incoming regulations would act as a quality control safeguard and could serve as a cost saving mechanism. The outgoing quality regulations would require peanuts to meet certain quality specifications and to be inspected before being disposed of in edible outlets to maintain the quality of peanuts for human consumption. Each lot of shelled peanuts to be used for edible purposes would also be required to be sampled and the samples chemically analyzed for aflatoxin. If the chemical assay shows the lot to be positive as to aflatoxin, the lot would not be allowed to be marketed for edible use. Such lots which are reconditioned (the removal of contaminated kernels) and subsequently retested and found negative as to aflatoxin could be disposed of in edible outlets. Currently, under the Agreement, lots of peanuts are certified "negative" with respect to aflatoxin if the chemical analysis shows that they contain 15 parts per billion (ppb) or less. Thus, the allowable level of aflatoxin proposed herein is 15 ppb. The sampling, inspecting, identifying, testing and certifying of lots of peanuts would be performed in accordance with §§ 997.30 and 997.50, as hereinafter proposed.

Under the proposed regulations, the sampling, inspection, positive lot identification, and certification of peanuts would be performed by the Federal or Federal-State Inspection Service. The chemical analysis would be performed in the same manner and by the same laboratories as prescribed under the Agreement. A list of approved laboratories including addresses and telephone numbers is provided in proposed paragraph (c) of § 997.30. To obtain information on making arrangements for the required inspection and certification, handlers should contact Chief, Fresh Products, Branch, rm. 2056–S, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Washington, DC 20250; Telephone (202) 447–5870.

Provisions controlling the disposition of peanuts failing to meet the requirements for human consumption also are proposed to assure that only sound, wholesome peanuts end up in human consumption outlets. There are two categories of inedible peanuts—unrestricted and restricted. Unrestricted peanuts are peanuts which are not edible grade but do not contain aflatoxin. Under the proposal, like the Agreement, such peanuts could be disposed of for domestic crushing, wildlife feed, bait for rodents, and livestock feed. These have traditionally been the only economically viable outlets for such peanuts. Most unrestricted meal (the byproduct from crushing) is used for livestock feed. Restricted peanuts are peanuts which contain aflatoxin. Such peanuts would only be allowed to be disposed of for restricted domestic crushing. The resulting meal could only be used for fertilizer, unless it were satisfactorily detoxified. When satisfactorily detoxified, the meal could be used for feed. To prevent use of restricted meal for feed, handlers would be required to denature it or restrict its sale to licensed or U.S. registered fertilizer manufacturers or firms engaged in exporting which would export such meal for non-feed use or sell it to fertilizer manufacturers.

Under the proposal, unrestricted and restricted peanuts may be exported as inedibles to countries other than Canada and Mexico. Exports of such peanuts would be required to be chopped into peanut fragments to assure that they are not used for human consumption. Fragmented raw peanuts cannot be roasted properly for human consumption. They are only satisfactory for crushing.

Export of inedible quality peanuts to Canada and Mexico would not be authorized because Canada and Mexico are not viable markets for oil stock peanuts. Therefore, there is a potential that such peanuts could be diverted to human consumption channels.

All movement and dispostion of unrestricted and restricted peanuts would be required to be reported as hereinafter discussed.

Handlers also would be required to submit reports necessary to ensure compliance with the proposed regulations. Reports regarding

acquisition, movement for further processing and disposition of peanuts and other necessary reports would be required. It is estimated that each handler will take 27 hours annually to complete the reports. Recordkeeping requirements would also be included to require handlers to retain information for at least two years beyond the crop year of applicability. Such proposed reporting and recordkeeping requirements will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) and will not be implemented until they have been approved.

For the purposes of checking and verifying reports filed by handlers or the operation of handlers under the regulations hereinafter proposed, provisions are included which would allow the Secretary, through duly authorized agents, to have access to any premises where peanuts may be held. Authroized agents, at any time during regular business hours, would be permitted to inspect any peanuts held and any and all records with respect to the acquisition, holding or disposition of any peanuts which may be held or which may have been disposed of by that handler.

It is the Department's view that the proposed requirements would help the entire peanut industry provide only good quality, wholesome peanuts for edible use. This is important in maintaining and expanding markets for peanuts and peanut products. These requirements could result in additional costs for a number of handlers. It is difficult to estimate the extent of any additional costs since many of the handlers who are not covered by the Agreement are already having their peanuts inspected and tested so that they meet the quality standards required by the buyers. However, the importance of providing safe products to consumers and other benefits expected from the restriction of low quality peanuts from edible markets should outweigh any additional costs resulting from these requirements.

List of Subjects in 7 CFR Part 997

Peanuts, Quality regulations, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 997 is proposed to be added as follows:

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

Definitions

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997.13 Area association.
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997.15 Handler.
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997.17 Inspection service.

Quality Regulations

997.20 Incoming regulation.
997.30 Outgoing regulation.
997.40 Reconditioning and disposition of peanuts failing quality requirements.
997.50 Inspection, chemical analysis, certification and identification.

Reports, Books and Records

997.52 Reports of acquisitions and shipments.
997.53 Verification of reports.
997.54 Agents.

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674; Sec. 4, 103 Stat. 1878, 7 U.S.C. 608b.

Definitions

§ 997.1 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be authorized to act in his stead.

§ 997.2 Fruit and Vegetable Division.

Fruit and Vegetable Division is synonymous with Division and means the Fruit and Vegetable Division of the Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456.

§ 997.3 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 997.4 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 997.5 Peanuts.

Peanuts means the seeds of the legume *arachis hypogaea* and includes both inshell and shelled peanuts, other than those marketed by the producer in green form for consumption as boiled peanuts.

(a) *Farmers stock. Farmers stock peanuts* means picked and threshed peanuts which have not been shelled, crushed, cleaned or otherwise changed (except for removal of foreign material, loose shelled kernels and excess moisture) from the form in which customarily marketed by producers.

(b) *Segregation 1. Segregation 1 peanuts* means farmers' stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus.*

(c) *Segregation 2. Segregation 2 peanuts* means farmers' stock peanuts with more than 2 percent damage kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus.*

(d) *Segregation 3. Segregation 3 peanuts* means farmers' stock peanuts with visible *Aspergillus flavus.*

§ 997.6 Loose shelled kernels.

Loose shelled kernels means peanut kernels or portions of kernels completely free of their hulls and found in deliveries of farmers' stock peanuts.

§ 997.7 Fall through.

Fall through means sound split and broken kernels and whole kernels which pass through specified screens.

§ 997.8 Pickouts.

Pickouts means those peanuts removed during the final milling process at the picking table, by electronic equipment, or otherwise during the milling process.

§ 997.9 Fragmented.

For the purposes of this part, fragmented means that not more than 30 percent of the peanuts shall be whole kernels that ride the following screens, by type: Spanish $^{15}/_{64}$ x $^{3}/_{4}$ inch slot; Runner $^{16}/_{64}$ x $^{3}/_{4}$ inch slot; and Virginia $^{13}/_{64}$ x 1 inch slot.)

§ 997.11 Producer.

Producer means any person engaged within the area in a proprietary capacity in the production of peanuts for sale.

§ 997.12 Production areas.

Production areas mean all States with commercial production of peanuts including (a) the Southeastern area consisting of the States of Alabama, Florida, Georgia, Mississippi, and that part of South Carolina south and west of Santee-Congaree-Broad Rivers, (b) the Southwestern area consisting of the States of Arizona, Arkansas, California, Louisiana, New Mexico, Oklahoma, and Texas, (c) the Virginia-Carolina Area consisting of the States of Missouri, North Carolina, Tennessee, Virginia, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

§ 997.13 Area association.

Area association means for the Southeastern area, GFA Peanut Association, Camilla, Georgia; Southwestern area, Southwestern Peanut Growers Association, Gorman, Texas; and Virginia-Carolina area, Peanut Growers Cooperative Marketing Association, Franklin, Virginia.

§ 997.14 Handle.

Handle means to engage in the receiving or acquiring, cleaning and shelling, cleaning inshell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned inshell or shelled peanuts or other activity causing peanuts to enter the current of commerce: Provided, That this term does not include sales or deliveries of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handler(s) and provided further, That this term does not include sales or deliveries of peanuts by such intermediary person(s) to a handler.

§ 997.15 Handler.

Handler means any person who handles peanuts, in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman or other intermediary between the producer and the person handling: Provided, That this term does not include handlers signatory to the Peanut Marketing Agreement.

§ 997.16 Crop year.

Crop year means the 12-month period beginning with July 1 of any year and ending with June 30 of the following year.

§ 997.17 Inspection service.

Inspection service means the Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, USDA.

Quality Regulations

§ 997.20 Incoming regulation.

(a) No handler shall receive or acquire peanuts intended for human consumption, either from a producer or other person, unless such peanuts are inspected pursuant to § 997.50 and are determined to be Segregation 1 peanuts at time of receipt from the producer or, if received from another person, had not been mixed with peanuts of a lower quality than Segregation 1 and meet the following additional requirements specified in this section: Provided, That a handler may: (1) Acquire shelled peanuts from the Commodity Credit Corporation (CCC) or cleaned inshell or shelled peanuts from other handlers or from buyers who have purchased such peanuts from handlers or from the CCC, if the lot has been certified as meeting the requirements of § 997.30(a) and the identity is maintained; and/or (2) perform services for an area association pursuant to a peanut receiving and warehouse contract.

(b) *Moisture and foreign material*—(1) *Moisture.* Except as provided under paragraph (e) *Seed Peanuts* of this section, no handler shall receive or acquire peanuts intended for human consumption containing more than 10.49 percent moisture: Provided, That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storing or milling. For farmers' stock peanuts, moisture determinations shall be rounded to the nearest whole number. Moisture determinations on shelled peanuts shall be carried to the hundredths place.

(2) *Foreign material.* No handler shall receive or acquire farmers' stock peanuts intended for human consumption containing more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be received or acquired if they are held separately until milled, or moved over a sand-screen before storage, or shipped directly to a plant for prompt shelling. The term "sand-screen" means any type of farmers' stock cleaner which, when in use, removes sand and dirt.

(c) *Damage.* For the purpose of determining damage, other than concealed damage, on farmers' stock peanuts, all percentage determinations shall be rounded to the nearest whole number.

(d) *Loose shelled kernels.* No handler shall receive or acquire for human consumption farmers' stock peanuts containing more than 14.49 percent loose shelled kernels, except that peanuts having a higher loose shelled kernel content may be received or acquired if they are held separately until milled or shipped directly to a plant for prompt shelling. All percentage determinations shall be rounded to the nearest whole number. Handlers may separate from the loose shelled kernels received with farmers' stock peanuts, those sizes or kernels which ride screens with the following or larger slot openings: Runner—$^{15}/_{64}$ x $^{3}/_{4}$ inch; Spanish and Valencia—$^{15}/_{64}$ x $^{3}/_{4}$ inch; Virginia—$^{15}/_{64}$ x 1 inch. If so separated, those loose shelled kernels which ride the screens may be included with shelled peanuts prepared by the handler for inspection and sale for human consumption: Provided, That no more than 5 percent of such loose shelled kernels are kernels which would fall through screens with such minimum prescribed openings. Those loose shelled kernels which do not ride the screens shall be removed from the farmers' stock peanuts and shall be held separate and apart from other peanuts and disposed of for inedible use as provided in § 997.40. If the kernels which ride the prescribed screen are not separated from the kernels which do not ride the prescribed screen, the entire amount of loose shelled kernels shall be removed from farmers' stock peanuts and shall be so held and so delivered or disposed of.

(e) *Seed peanuts.* (1) Peanuts which are not Segregation 1 peanuts and therefore cannot be acquired for human consumption may be acquired, shelled and delivered for seed purposes. Peanuts intended for seed use which do not meet Segregation 1 requirements shall be stored and shelled separate from peanuts intended for human consumption. A handler whose operations include custom seed shelling may receive, custom shell, and deliver for seed purposes farmers' stock peanuts, and such peanuts shall be exempt from the requirements of this section and, therefore, shall not be required to be inspected and certified as meeting these requirements, and the handler shall report to the Division the weight of each lot of farmers' stock peanuts received on such basis on Form FV–117 "Weekly Report of Uninspected Farmers' Stock Seed Peanuts Received for Custom Seed Shelling". However, handlers who acquire seed peanut residuals from their custom shelling of uninspected (farmers' stock) seed peanuts or from another person shall hold and/or mill such residuals separate and apart from other receipts or acquisitions of the handler, and such residuals which meet the requirements specified in § 997.30(a) may be disposed of by sale to human consumption

outlets, and any portion not meeting such requirements shall be disposed of by sale as peanuts failing to meet human consumption requirements pursuant to § 997.40.

(f) *Oilstock.* Handlers may acquire for disposition to domestic crushing or export to countries other than Canada and Mexico farmers' stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption. Handlers may act as accumulators and acquire, from other handlers or other persons, Segregation 2 or 3 farmers' stock peanuts. Handlers may also acquire from other handlers shelled or fragmented peanuts originating from Segregation 2 or 3 farmers' stock or the entire mill production of shelled or fragmented peanuts from Segregation 1 farmers' stock or lots of shelled peanuts originating from Segregation 1 peanuts and which have been positive lot identified as specified in § 997.30(d), which failed to meet the requirements for human consumption pursuant to § 997.30(a): Provided, That all such acquisitions are held separate from Segregation 1 peanuts acquired for milling or from edible grades of shelled or milled peanuts.

Handlers may commingle the Segregation 2 and 3 peanuts or keep them separate and apart and further disposition shall be only as provided in § 997.40(b)(4)(i). Handlers who acquire farmer's stock peanuts of a lower quality than Segregation 1 or cleaned inshell peanuts which fail to meet the requirements for human consumption shall report such acquisitions to the Division as prescribed on Form FV–117–1 "Handlers Monthly Report of Acquisition of Segregation 3 and/or Segregation 2 Comingled Peanuts". Handlers who acquire grades or sizes of shelled peanuts which fail to meet the requirements for human consumption for disposition to domestic crushing or for fragmenting and subsequent export to countries other than Canada or Mexico shall report such acquisitions on Form FV–117–2 "Acquisitions of Non-Edible Grades of Commercial Shelled Peanuts for Crushing, Fragmenting or Dyeing".

(g) *Shelled Peanuts.* Handlers may acquire from other handlers, for remilling and subsequent disposition to human consumption outlets, shelled peanuts (which originated from "Segregation 1 peanuts") that fail to meet the requirements specified for human consumption in § 997.30(a). Any lot of such peanuts must be accompanied by a valid inspection certificate for grade factors and must be positive lot identified. Transactions made in this manner shall be reported to the Division on Form FV–117–3 "Report of Disposition to and Acquisition from Another Handler—Shelled Peanuts Failing Edible Quality Requirements for Remilling and Further Handling" by both the handler acquiring the peanuts and the handler selling such peanuts. Peanuts acquired pursuant to this paragraph shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler, and further disposition shall be regulated by § 997.40.

(h) *Inedible Quality Shelled Peanuts for Disposition to Animal Feed.* Handlers may receive or acquire from other handlers, for further milling and/or processing and subsequent disposition for use as domestic animal feed, shelled peanuts that fail to meet the requirements specified for human consumption in § 997.30(a). Any lot of such peanuts received or acquired for such further disposition shall be positive lot identified and covered by a valid grade inspection certificate issued by a Federal or Federal-State Inspector. Transactions made in this manner shall be reported to the Division on Form FV–117–2 "Acquisitions of Non-Edible Grades of Commercial Shelled Peanuts for Crushing, Fragmenting or Dyeing". Peanuts received or acquired pursuant to this paragraph shall be held, milled, and/or processed separate and apart from peanuts destined to human consumption outlets and further disposition shall be regulated as provided in § 997.40(b)(2).

§ 997.30 Outgoing regulation.

(a) *Shelled peanuts.* No handler shall ship, sell, or otherwise dispose of shelled peanuts for human consumption unless such peanuts are Positive Lot Identified and certified as meeting the following requirements:

Minimum Grade Requirements—Peanuts for Human Consumption, Whole Kernels and Splits

Type and Grade Category	Maximum Limitations (Excluding Lots of "Splits")						
	Unshelled Peanuts and Damaged Kernels	Unshelled Peanuts, Damaged Kernels and Minor Defects	Fall Through			Foreign Material	Moisture
			Sound Split and Broken Kernels	Sound Whole Kernels	Total		
Runner	1.50%	2.50%	3.00% 17/64 Inch Round Screen.	3.00% 16/64 x 3/4 inch Slot screen.	4.00% Both Screens	0.20%	9.00%
Virginia (Except No. 2)	1.50%	2.50%	3.00% 17/64 Inch Round Screen.	3.00% 15/64 x1 Inch Slot Screen.	4.00% Both Screens	.20%	9.00%
Spanish and Valencia	1.50%	2.50%	3.00% 16/64 Inch Round Screen.	3.00% 15/64 x 3/4 Inch Slot screen.	4.00% Both Screens	.20%	9.00%
No. 2 Virginia	1.50%	3.00%	6.00% 17/64 Inch Round Screen.	6.00% 1/64 x 1 Inch Slot Screen.	6.00% Both Screens	.20%	9.00%
Lost of "Splits":							
Runner (Not More Than 4% Sound Whole Kernels).	1.50%	2.50%	3.00% 17/64 Inch Round Screen.	3.00% 14/64 x 3/4 Inch Slot Screen.	4.00% Both Screens	.20%	9.00%
Virginia (Not Less Than 90% Splits).	1.50%	2.50%	3.00% 17/64 Inch Round Screen.	3.00% 14/64 x 1 Inch Slot Screen.	4.00% Both Screens	.20%	9.00%
Spanish and Valencia (Not More Than 4% Sound Whole Kernels).	1.50%	2.50%	3.00% 16/64 Inch Round Screen.	3.00% 13/64 x 3/4 Inch Slot Screen.	4.00% Both Screens	.20%	9.00%

Peanuts meeting the foregoing specifications must also be certified "negative" as to aflatoxin content prior to shipment. "Negative", as used herein, means having an aflatoxin content of 15 parts per billion or less. Prior to shipment, appropriate samples for pretesting shall be drawn, in accordance with paragraph (c) of this section, from

each lot of edible quality peanuts. The lot size of edible quality shelled peanuts, in bulk or bags, shall not exceed 200,000 pounds.

(b) *Cleaned inshell peanuts.* No handler shall ship, sell, or otherwise dispose of cleaned inshell peanuts for human consumption: (1) With more than 1.00 percent kernels with mold present unless a sample of such peanuts, drawn by an inspector of the Federal or Federal-State Inspection Service, was analyzed chemically by a U.S. Department of Agriculture laboratory (hereinafter referred to as "USDA laboratory") or a laboratory listed in paragraph (c) hereinafter and found to be wholesome relative to aflatoxin; (2) with more than 2.00 percent peanuts with damaged kernels; (3) with more than 10.00 percent moisture; or (4) with more than 0.50 percent foreign material. The lot size of such peanuts in bags or bulk shall not exceed 200,000 pounds.

(c) *Pretesting shelled peanuts*—(1) Each handler shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by an inspector of the Federal or Federal-State Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. The three 48-pound samples shall be designated by the Federal or Federal-State Inspection Service as "Sample #1N", "Sample #2N", and "Sample #3N" and each sample shall be placed in a suitable container and "positive lot identified" by means acceptable to the Inspection Service. Sample #1N may be prepared for immediate testing or Sample #1N, Sample #2N, and Sample #3N may be returned to the handler for testing at a later date.

(2) Before shipment of a lot of peanuts to a the buyer (receiver), the handler shall cause Sample #1 to be ground by the Federal or Federal-State Inspection Service, a USDA laboratory or a laboratory listed herein, in a "subsampling mill" approved by the Division. The resultant ground subsample from Sample #1N shall be of a size specified by the Division and shall be designated as "Subsample 1–ABN" and at the handler's or buyer's option, a second subsample may also be extracted from Sample #1N. It shall be designated as "Subsample 1–CDN". Subsample 1–CDN may be sent as requested by the handler or buyer, for aflatoxin assay, to a USDA laboratory or other laboratory that can provide analyses results on such samples in 36 hours. The cost of sampling and testing Subsample 1–CDN shall be for the account of the requester. Subsample 1–AB shall be analyzed only in a USDA laboratory or listed herein. Subsamples 1–ABN and 1–CDN shall be accompanied by a notice of sampling signed by the inspector containing, at least, identifying information as to the handler (shipper), the buyer (receiver), if known, and the positive lot identification of the shelled peanuts. A copy of the such notice covering each lot shall be sent to the Division.

(3) The samples designated as Sample #2N and Sample #3N shall be held as aflatoxin check-samples by the Inspection Service or the handler and shall not be included in the shipment to the buyer until the analyses results from Sample #1N are known.

(4) Upon call from the laboratory, the handler shall cause Sample #2N to be ground by the Inspection Service in a "subsampling mill". The resultant ground subsample from Sample #2N shall be of a size specified by the Division and it shall be designated as "Subsample #2–ABN". Upon call from the laboratory, the handler shall cause Sample #3N to be ground by the Inspection Service in a "subsampling mill". The resultant ground subsample from Sample #3N shall be of a size specified by the Division and shall be designated as "Subsample #3–ABN". "Subsamples 2–ABN and 3–ABN" shall be analyzed only in a USDA laboratory or a laboratory listed herein and each shall be accompanied by a notice of sampling. A copy of each such notice shall be sent to the Division. The results of each assay shall be reported by the laboratory to the handler and to the Division. All costs involved in the sampling and testing of peanuts required by this regulation shall be for the account of the applicant.

(5) Information on making arrangements for the required inspection and certification, can be obtained by contacting the Chief, Fresh Products, Branch, Rm. 2056–S, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Washington, DC 20250; Telephone (202) 447–5870. Laboratories at the following locations are approved to perform the chemical analyses required pursuant to this part. The sampling plan and procedures may be obtained from the Division.

Commodities Scientific Support Division, Agricultural Marketing Service, USDA, 1411 Reeves St., Mail: P.O. Box 1368, Dothan, AL 36301, Tel. (205) 794–5070.

Commodities Scientific Support Division, Agricultural Marketing Service, USDA, 301 West Pearl St., Mail: P.O. Box 279, Aulander, NC 27805, Tel. (919) 345–1661.

Commodities Scientific Support Division, Agricultural Marketing Service, USDA, 2705 Taft St., Albany, GA 31707, Tel. (912) 430–8490/8491.

Commodities Scientific Support Division, Agricultural Marketing Service, USDA, P.O. Box 488, Golden Peanut Company, Ashburn, GA 31714, Tel. (912) 567–3703.

Commodities Scientific Support Division, Agricultural Marketing Service, USDA, 610 North Main St., Blakely, GA 31723, Tel. (912) 723–4570.

Commodities Scientific Support Division, Agricultural Marketing Service, USDA, 548 North Ellis Street, Mail: P.O. Box 548, Alimento Processing, Camilla, GA 31730, Tel. (912) 336–0785.

Commodities Scientific Support Division, Agricultural Marketing Service, USDA, P.O. Box 272, Dawson, GA 31742, Tel. (912) 995–2111.

Commodities Scientific Support Division, Agricultural Marketing Service, USDA, Golden Peanut Co., 106 South Cliff St., Mail: P.O. Box 97, Graceville, FL 32440, Tel. 1–800–451–2348.

Commodities Scientific Support Division, Agricultural Marketing Service, USDA, 107 South 4th St., Madill, OK 73446, Tel. (405) 795–5615.

Commodities Scientific Support Division, Agricultural Marketing Service, USDA, 308 Culloden St., Mail: P.O. Box 1130, Suffolk, VA 23434, Tel. (804) 925–2286.

ABC Research, P.O. Box 1557, Gainesville, FL 32602, Tel. (904) 372–0436.

Pert Laboratories, P.O. Box 267, Edenton, NC, Tel. (919) 482–4456.

Professional Service Industries, Inc., 3 Burwood Lane, San Antonio, TX 78216, Tel. (512) 349–5242.

Texas Department of Agriculture, 301 West Navarro St., DeLeon, TX 76444, Tel. (817) 893–2915.

Texas Department of Agriculture, 400 Lubbock St., Gorman, TX, Tel. (817) 734–2721.

Handlers should contact the nearest laboratory from the above list to arrange to have samples chemically analyzed for aflatoxin, or for further information concerning the chemical analysis required pursuant to this part handlers may contact:

Dr. Craig Reed, Director, Commodities Scientific Support Division, Agricultural Marketing Service, USDA, P.O. Box 96456, Rm. 3064–S, Washington, DC 20090–6456, Tel. (202) 447–5231.

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts shipped or otherwise disposed of for human consumption shall be identified by positive lot identification procedures. For the purpose of this regulation, "positive lot identification" of a lot of shelled or inshell peanuts is a means of relating the inspection certificate to the lot covered so that there can be no doubt that the peanuts delivered are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification, shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bag in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bags the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and, if in other containers, by other means acceptable to the Federal or Federal-State Inspection Service. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures.

(e) *Reinspection.* Whenever the Division has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Division may reject the then effective inspection certificate and may require the owner of the peanuts to have a reinspection to establish whether or not such peanuts may be disposed of for human consumption.

(f) *Inter-plant transfer.* Any handler may transfer peanuts from one plant owned by the handler to another of the handler's plants or to commercial storage, without having such peanuts positive lot identified and certified as meeting quality requirements: *Provided,* That, ownership is retained by the handler; *Provided further,* That, for handlers located within any one of the specific production areas defined in § 997.12 such transfer may be only to points within the same production area. Upon any transferred peanuts being disposed of for human consumption, such peanuts shall meet all the applicable requirements.

(g) *Residuals from seed peanuts.* Handlers who receive and custom shell for seed purposes farmers' stock peanuts (which have not been inspected and certified as meeting the requirements § 997.20), shall hold and mill peanuts acquired as residuals from such operations separate and apart from peanuts acquired as Segregation 1 farmers' stock. Likewise, any such residuals received or acquired from a handler or non-handler, shall be held and milled separate and apart in the same manner. Residuals that meet requirements of § 997.30(a) may be disposed of by sale to human consumption outlets or to another handler and any portion in positive identified lots not meeting such requirements shall be handled and disposed of pursuant to the provisions of § 997.40 as hereinafter set forth.

§ 997.40 Reconditioning and disposition of peanuts failing quality requirements.

(a) *Further processing of shelled peanuts failing quality requirements—* (1) Handlers may remill peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements of § 997.30(a) or move positive lot identified shelled peanuts that fail to meet such requirements to a custom remiller or sell such peanuts to another handler for remilling or further handling. If after remilling, such peanuts meet the requirements of § 997.30(a), they may be disposed of for human consumption. If such peanuts still do not meet the requirements of § 997.30(a) they may be blanched as provided in the following paragraph (a)(2) of this section or disposed of and such disposition reported as provided in paragraph (b) of this section.

(2) Handlers may blanch or cause to have blanched positive lot identified shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for human consumption specified in § 997.30(a). Such peanuts which are blanched and are subsequently inspected and tested, or only inspected for grade requirements if such peanuts are covered by a previous "negative" aflatoxin certificate, as provided in § 997.50 and § 997.30(c) and meet the requirements specified in § 997.30(a) may be disposed of for human consumption. If such peanuts still do not meet the requirements of § 997.30(a) they shall be disposed of and such disposition reported as provided in paragraph (b) of this section.

(3) Lots of peanuts moved under the provisions of the preceding paragraphs (a)(1) and (a)(2) of this section must be accompanied by a valid grade inspection certificate and must be positive lot identified. The title of such peanuts shall be retained by the handler until the peanuts have been remilled or blanched and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in § 997.30(a). Movement of peanuts which fail to meet the quality requirements specified in § 997.30 for remilling and/or blanching shall be reported on Form FV–117–4 "Report of Movement to Blancher or Remiller—For Blanching or Custom Remilling—Peanuts Failing Edible Quality Requirements".

(4) The residual peanuts resulting from remilling shall be bagged and red-tagged and disposed of to domestic crushing by the remiller or returned to the handler for disposition as restricted as provided in paragraph (b)(3) of this section. The residual peanuts, excluding skins and hearts, resulting from blanching, shall be bagged and red tagged and returned to the handler for disposition as provided in paragraph (b)(3) of this section; or in the alternative, if such residuals are positive lot identified by a Federal or Federal-State Inspection Service, they may be disposed of by the blancher to domestic crushing or exported to countries other than Canada or Mexico, provided they meet fragmented requirements and are marked "Non-edible quality".

(b) *Disposition of shelled peanuts failing quality requirements for human consumption)—*(1) Handlers may dispose of positive lot identified shelled peanuts (which originated from Segregation 1 peanuts) which fail to meet the requirements for human consumption specified in § 997.30(a) but were determined "negative" as to aflatoxin pursuant to § 997.30(c) as unrestricted: (i) to domestic crushing or to other handlers for crushing or fragmenting and exportation (such disposition shall be reported on Form FV–117–5 "Handlers Report of Dispositions of Non-Edible Quality Shelled Peanuts to Crusher or Frogmenter or Dyeing Processor"); (ii) to export to countries other than Canada or Mexico, provided they meet fragmented requirements (such disposition shall be reported on Form FV–117–6 "Handler's Report of Export of Unrestricted Non-Edible Quality Fragmented Peanuts"; (iii) to domestic animal feed use as provided in paragraph (b)(2) hereinafter or to other handlers for such disposition; (iv) to wildlife feed or rodent bait use in containers labeled as such (such disposition shall be reported on FV–117–7 "Handlers Report of Disposition of Non-Edible Quality Peanuts for Wild-Life Feed or Rodent Bait").

(2) Shelled peanuts which fail to meet requirements for disposition to human consumption outlets may be disposed of

for use as domestic animal feed: *Provided*, That each lot of peanuts so disposed of is (i) treated with an appropriate coloring or dyeing solution with a minimum of 80 percent of the peanuts showing evidence of the dye or coloring agent; (ii) handled and shipped under positive lot identification procedures (except for bulk loads, red tags shall be used and such tags marked, "For Animal Feed—Not for Human Consumption"); (iii) covered by a valid "negative" aflatoxin certificate; and (iv) that the handler's bill of lading and his invoice covering the shipment of each such lot include the following statement: "The peanuts covered by this bill of lading (or invoice are for animal feed only and are not to be used for human consumption." Handlers shall report such disposition on Form FV–117–8 "Handler's Disposition Report of Dyed Non-Edible Quality Peanuts to Animal Feed Use (Unrestricted Peanuts Only)".

(3) Positive lot identified shelled peanuts failing to meet the quality requirements for human consumption specified in § 997.30(a) due to testing positive for aflatoxin pursuant to § 997.30(c) may be disposed of for "restricted" domestic crushing and reported on Form FV–117–5 "Handlers Report of Dispositions of Non-Edible Quality Shelled Peanuts to Crusher or Fragmenter or Dyeing Processor". Such peanuts may also be exported, as "restricted" to countries other than Canada or Mexico. Prior to exportation, the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for "fragmented" peanuts. The "in-land" bill of lading and invoice covering the export of "restricted" peanuts must include the following statement: "The peanuts covered by this bill of lading (or invoice) are limited to crushing only and may contain aflatoxin. Exportation of such restricted peanuts shall be reported on Form FV–117–9 "Handler's Report of Export of Restricted Non-Edible Quality Fragmented Peanuts". Meal produced from peanuts which are disposed of to crushing as "restricted" shall be used or disposed of as fertilizer or other non-feed use. To prevent use of restricted meal for feed, handlers shall either denature it or restrict its sale to licensed or registered U.S. fertilizer manufacturers or firms engaged in exporting who will export such meal for non-feed use or sell it to the aforesaid fertilizer manufacturers. Handlers or crushers may detoxify positive tested meal, have it retested, and if such meal is found negative as to aflatoxin content, it may be disposed of for feed use and reported as provided in paragraph (b)(2) of this section.

(4)(i) Handlers who have acquired Segregation 2 and 3 farmer's stock peanuts pursuant to § 997.20(f) may commingle such peanuts or keep them separate and apart. The Segregation 3 farmers' stock peanuts or commingled Segregation 2 and 3 farmers' stock peanuts may be disposed of (*a*) to other handlers for shelling, fragmenting, or crushing, as "restricted" or (*b*) to crushers for crushing as "restricted". Handlers may shell such peanuts and further disposition of the shelled peanuts shall be as provided in paragraph (b)(3) of this section.

(ii) Handlers who have acquired Segregation 2 farmers' stock peanuts pursuant to § 997.20(f) and held them separate and apart from Segregation 3 peanuts may commingle the Segregation 2 farmers' stock with Segregation 1 farmers' stock for disposition to domestic crushing or export as inedibles. The Segregation 2 farmers' stock peanuts or commingled Segregation 1 and 2 farmers' stock peanuts may be disposed of to other handlers for shelling, fragmenting, or crushing or to crushers. Handlers may shell the Segregation 2 or commingled Segragation 1 and 2 peanuts and dispose of the shelled peanuts: (*a*) To another handler for fragmenting or crushing; (*b*) to export as "unrestricted"; or (*c*) to domestic crushing as "unrestricted". The meal produced from such peanuts may be disposed of without restriction. Prior to exportation, the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for fragmented peanuts. If such peanuts are covered by a valid "negative" aflatoxin certificate they may be disposed of as provided is paragraph (b)(1) of this section.

(5) The disposition and reporting requirements applicable to peanuts failing quality requirements for human consumption specified in the preceding paragraph (b) shall also apply to loose shelled kernels, fall through and pickouts.

§ 997.50 Inspection, chemical analysis, certification and identification.

Each handler shall, at his own expense, prior to or upon receiving and before shipping or disposing of peanuts, cause an inspection to be made of any such peanuts not covered by a valid inspection certificate, to determine whether they meet the applicable grade requirements effective pursuant to this part and shall comply with such identification requirements prescribed by this part or which the Secretary may prescribe. Each handler shall also cause appropriate samples to be drawn and chemically analyzed by a USDA laboratory or laboratory listed in § 997.30 for wholesomeness as provided in § 997.30 of this part. Such handler shall obtain grade and aflatoxin certificates that such peanuts meet the aforementioned applicable requirements and all such certificates shall be available for examination or use by the Division. Acceptable certificates shall be those issued by Federal or Federal-State inspectors authorized or licensed by the Secretary and USDA laboratories or those listed in § 997.30 of this part. Each handler shall furnish, or cause the inspection service or the laboratory to furnish to the Division, a copy of the inspection certificate and a copy of the results of the chemical analyses issued to him on each lot of shelled peanuts or cleaned inshell peanuts.

Reports, Books and Records

§ 997.52 Reports of acquisitions and shipments.

Each handler shall report acquisitions of Segregation 1 farmers' stock peanuts on Form FV–117–10 "Handlers Monthly Report of Acquisitions" and file reports such other reports of acquisitions and shipments of peanuts, as prescribed in this part. Upon the request of the Division, each handler shall furnish such other reports and information as necessary to enable the Division to carryout the provisions of this part. All reports and records furnished or submitted by handlers to the Division which include data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler shall not be disclosed unless such disclosure is determined necessary by the Secretary to enforce the provisions of this part.

§ 997.53 Verification of reports.

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this part, the Secretary, through its duly authorized agents, shall have access to any premises where peanuts may be held by any handler and at any time during reasonable business hours and shall be permitted to inspect any peanuts so held by such handler and any and all records of such handler with respect to the acquisition, holding, or disposition of all peanuts which may be held or which may have been disposed by the handler. Each handler shall maintain such records of peanuts received, held, and disposed of by the handler, that will substantiate any required reports and will show

performance under this part. Such records shall be retained for at least two years beyond the crop year of their applicability.

§ 997.54 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

Dated: August 30, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-20948 Filed 9-7-90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-90-22]

Petition for Rulemaking, Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: November 9, 1990.

ADDRESSES: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No., 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on August 31, 1990.

Deborah E. Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26256.
Petitioner: Richard C. Bartel.
Regulations Affected: 14 CFR 1.1.
Description of Petition: To amend § 1.1 to define the terms "prescribed by the Administrator" and/or "approved by the Administrator" as they are used in the Federal Aviation Regulations.
Petitioner's Reason for the Request: The petitioner believes it is necessary to clarify which publications and/or acts of the Administrator and FAA employees and "Designees" apply to the public and which apply only to the employees of the FAA; and to clarify the legal status of other publications of FAA such as "Advisory Circulars" and "FAA Notices" and the Airman's Information Manual.

[FR Doc. 90-21127 Filed 9-7-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-159-AD]

Airworthiness Directives; Aerospatiale Caravelle SE 210 Model I, III, and VIR Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Aerospatiale Caravelle SE 210 Model I, III, and VIR series airplanes, which would require an eddy current rototest inspection to detect cracks in the rear spar upper cap at Rib 49, and repair, if necessary. This proposal is prompted by in-service experience which has identified cracks in the rear spar upper cap. This condition, if not corrected, could result in reduced structural integrity of the wings.

DATES: Comments must be received no later than October 31, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-159-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable serivce information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Huhn, Standardization Branch, ANM-113; telephone (206) 227-2141. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environemntal, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-159-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Aerospatiale Caravelle SE 210 Model I, III, and VIR series airplanes. Inspections in-service airplanes have identified cracks on the rear spar uppe cap. These cracks are not visible unless the wing/fuselage junction fittings are removed. The cracks appear to initiate at 6 mm diameter holes. This condition, if not corrected, could result in reduced structural integrity of the wings.

Aerospatiale has issued Service Bulletin 57–69, dated March 12, 1990, which describes procedures for an eddy current rototest inspection to detect cracks in holes Nos. 1, 2, and 3 at the level of the rear spar upper cap and the splice under Rib 49, and repair, if necessary. The DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 90–060–070(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require an eddy current rototest inspection to detect cracks in holes Nos. 1, 2, and 3 at the level of the rear spar upper cap and the splice under Rib 49, and repair, if necessary, in accordance with the service bulletin previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

It is estimated that 4 airplanes of U.S. registry would be affected by this AD, that it would take approximately 38 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,080.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale (Formerly SUD Aviation/SUD-Service): Applies to all Caravelle SE 210 Model I, III, and VIR series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect cracks in the rear spar upper cap at Rib 49 and to prevent reduced structural integrity of the wings, accomplish the following:

A. Prior to the accumulation of 25,000 landings, or within 120 days after the effective date of this AD, whichever occurs later, perform an eddy current rototest inspection of hole No. 1 (left and right wings) at the level of the rear spar upper cap (angle extrusion) and the splice under Rib 49, in accordance with Aerospatiale Service Bulletin 57–69, dated March 12, 1990. If no crack is detected in hole No. 1, the airplane may be returned to service.

B. If a crack is detected in the angle extrusion for hole No. 1, accomplish the following in accordance with Aerospatiale Service Bulletin 57–69, dated March 12, 1990:

1. Prior to further flight, repair the crack and perform an eddy current rototest inspection of holes No. 2 and 3 (left and right wings), in accordance with the service bulletin.

2. If no crack is found in holes No. 2 and 3, the airplane may be returned to service. Repeat the eddy current rototest inspection of hole No. 2 at intervals not to exceed 1,500 landings in accordance with the service bulletin.

3. If a crack is detected in holes No. 2 or 3, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note.—The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Issued in Renton, Washington, on August 30, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–21132 Filed 9–7–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–NM–158–AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, equipped with certain trimmable horizontal stabilizer (THS) attachment lugs, which would require repetitive visual and eddy current inspections to detect corrosion and cracks in the THS attachment lugs, and repair or replacement, if necessary. This proposal is prompted by reports of

in-service airplanes found with cracks in the lower THS attachment lug at frame 91. This condition, if not corrected, could result in reduced structural integrity of the horizontal stabilizer.

DATES: Comments must be received no later than October 31, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–158–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 227–2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–158–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de l' Aviation Civile (DGAC), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain airbus Industrie Model A300 series airplanes. Recent reports indicate that cracks have been found on in-service airplanes in the trimmable horizontal stabilizer (THS) attachment lugs at Frame 91. Further investigation revealed that the affected attachment lugs are made from 2014 material. Airplanes with attachment lugs made from 7075 material have not experienced such cracking. Such cracking, if not corrected, could result in reduced structural integrity of the horizontal stabilizer.

Airbus Industrie has issued Service Bulletin A300–53–269, dated December 18, 1989, which describes procedures for repetitive visual and eddy current inspections to detect cracks and corrosion in the THS attachment lugs, and repair or replacement, if necessary. The French DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 90–020–102(B) addressing this subject.

Airbus Industrie has also issued Service Bulletin A300–53–270, Revision 1, dated February 22, 1990, which describes procedures for installation of Modification 7715/D7222, Which consists of replacement of all the bushings of the THS attachment lugs with new bushings having reduced interference fit and manufactured from stainless steel. Accomplishment of this modification terminates the requirement for the repetitive inspections. The French DGAC has not classified this service bulletin as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive visual and eddy current inspections to detect cracks and corrosion in the THS attachment lugs at Frame 91, and repair or replacement, if necessary, in accordance with Airbus Industrie Service Bulletin A300–53–269. This proposal would provide for optional terminating action for the repetitive inspections by the installation of Modification 7715/07222, described above.

It is estimated that 44 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $17,600.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to all Model A300 series airplanes, equipped with one or more trimmable horizontal stabilizer (THS) attachment lugs made from 2014 material, certificated in any category.

Compliance is required as indicated, unless previously accomplished.

To detect cracks and corrosion in the THS attachment lugs at Frame 91 and to prevent consequent reduced structural integrity of the horizontal stabilizer, accomplish the following:

A. Prior to the accumulation of 1,200 landings, or within 90 days after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 1,200 landings, perform a visual and eddy current inspection of all attachment lugs made from 2014 material, in accordance with Airbus Industrie Service Bulletin A300–53–269, dated December 18, 1989. Repeat these inspections thereafter at intervals not to exceed 1,200 landings.

Note.—Attachment lugs made from 7075 material are not affected by this AD.

B. If cracks or corrosion are detected, prior to further flight, repair or replace the affected lugs in accordance with Airbus Industrie Service Bulletin A300–53–269, dated December 18, 1989.

C. Installation of Modification No. 7715/D7222, in accordance with Airbus Industrie Service Bulletin A300–53–270, Revision 1, dated February 22, 1990, constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note.—The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on August 30, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–21131 Filed 9–7–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regs. No. 16]

RIN 0960–AC28

Supplemental Security Income for the Aged, Blind, and Disabled; Payment of Benefits Due Deceased Recipients

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Social Security Administration proposes to amend its regulations to reflect section 1631(b)(1) of the Social Security Act as amended by section 8 of Public Law 99–643. This statutory provision expanded our authority to pay supplemental security income (SSI) benefits due persons who are deceased. Under this provision we are now authorized to pay SSI benefits due a deceased individual to a surviving spouse, eligible or not, who lived in the same household with the deceased in the month of death or in the 6 months preceding the month of death. We may also now pay SSI benefits due a deceased disabled or blind child to the parents who lived with the child in the month of death or in the 6 months preceding the month of death. In accordance with our expanded authority pay any benefits due, the proposed rules provide that we will continue to process a request for an administrative law judge hearing or Appeals Council review after the death of the person who originally filed the action if a spouse or parent eligible to receive SSI benefits that may be due the deceased individual wishes to continue the proceedings. We are also proposing to change our regulations to clarify our longstanding procedure that if a deceased individual has authorized interim assistance reimbursement (IAR) to a State pursuant to section 1631(g) of the Social Security Act, we will not dismiss a pending request for hearing or Appeals Council review upon the death of the individual, even if there are no persons to pursue the appeal. This change is unrelated to section 8 of Public Law 99–463. These proposed regulations also make several other changes that are not required by section 8 of Public Law 99–643, but which involve overpayment and underpayment issues.

DATES: To be sure that your comments are considered, we must receive them no later than November 9, 1990.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235 or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the person shown below.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, 301–965–1795.

SUPPLEMENTARY INFORMATION: These proposed rules reflect section 1631(b)(1) of the Social Security Act (the Act), as amended by section 8 of Public Law 99–643, by revising the circumstances under which SSI benefits, that may be due persons who have died, may be paid to survivors. Under these proposed rules, if the deceased had a spouse, as spouse is defined in § 416.1806, in the month of death who was not his or her "eligible spouse," as defined in § 416.1801, that spouse may be paid any benefits due the deceased for the month of June 1986 and for later months if the surviving spouse was "living in the same household" with the deceased in the month of death or in the 6 months preceding the month of death. These proposed rules do not change the current rules that permit payment of benefits due the deceased individual to an eligible spouse.

Under section 1631(b)(1)(A)(i), a spouse and the deceased where "living in the same household" if they were "living in the same household" under the rules for title II lump-sum death payments made pursuant to section 202(i) of the Act in the month of death or in the 6 months preceding the month of death. See § 404.347. Since the rules for "deeming" are more restrictive than the rules in section 202(i), an ineligible spouse who was "living in the same household" with the deceased for purposes of deeming will automatically meet the "living in the same household" test of section 202(i).

When the deceased was child, as defined in § 416.1856, a natural or adoptive parent may qualify for the benefits due. A stepparent who was not an adoptive parent cannot qualify since the statute specifies payment only to a parent or parents but does not include the spouse of a parent. Without specific legislative authority or any indication in the legislative history that Congress

intended stepparents to qualify for benefits due to a deceased child, we have no clear basis for making such payments to stepparents. Moreoever, to do so could create competing claims on underpayments. If the child was living with a natural or adoptive parent or parents in the month of death or in the 6 months preceding the month of death, we can pay that parent or parents any SSI benefit due the deceased for the month of June 1986 and for later months.

Under these proposed reulgations, a child will be considered as having been "living with" his or her parents if the child was in the same household with the parents under the rules for deeming of income in the period. We considered establishing a requirement of "actual physical cohabitation" to establish that the parents and child lived together in the month of death or in the 6 months preceding the month of death. Instead, we chose a policy that would establish that a child was "living with" his or her parents if the child and parents were in the same household under the rules for deeming of parental income. Requiring actual physical cohabitation would create a new definition of "living with" and thus would complicate the administration of the program. The definition used in "deeming" uses the general rule of "actual physical cohabitation" with some common sense exceptions for "temporary absences," and this will best effectuate the intent of the amendment. The term survivor as used in the rest of this preamble refers to the spouses and parent we have described above.

Determinations about any SSI benefits payable to survivors, and how and to whom benefits will be paid, are "initial determinations" as defined in § 416.1402, giving rise to administrative and judicial appeal rights. If an individual dies after requesting an administrative law judge hearing or Appeals Council review, we will not dismiss the request if a spouse or parent qualified to receive any SSI benefits due the deceased individual wishes to continue the proceedings. We also will not dismiss a pending request for a hearing or Appeals Council review upon the death of the individual if the deceased authorized interim assistance reimbursement to a State, even if there is not spouse or parent to pursue the appeal.

Proposed Changes

Current rules at §§ 416.340 and 416.345 authorize the use of the date of a written statement or oral inquiry as an individual's date of application for SSI benefits. Current rules also provide that if the individual dies before he or she has filed an application, the date of the written statement or oral inquiry will be used as the date of application if the deceased's eligible spouse or someone on his or her behalf files an SSI application, and the eligible spouse lived with the deceased within 6 months immediately preceding the individual's death. The proposed regulations at §§ 416.340(d)(2) and 4316.345(e)(2) provide that we will use the date of the written or oral inquiry as the date of application if the claimant dies before an application is filed and a surviving eligible or ineligible spouse or parent of a blind or disabled child who could be paid the SSI benefits as a survivor or someone or his or her behalf files an SSI application form within the prescribed time.

Current rules at § 416.533 bar payment of SSI benefits to a transferee or assignee of an eligible individual except for amounts due a State or political subdivision as interim assistance reimbursement. The proposed regulations at § 416.533 provide that any SSI benefit amounts payable to survivors are also not subject to transfer or assignment.

We are also clarifying the current rules at § 416.536 to delete references to underpayment amounts for a "month."

As explained in the introductory paragraph in § 416.536 and the provisions of § 416.538, we determine underpayments for a "period" rather than by month. Further, the proposed rule at § 416.536 contains a phrase identical to that now set forth in § 416.537(a) that explains when payment of benefits is made. This proposed change standardizes the rule as to when payment of benefits is to be made for underpayments with the rule regarding overpayments.

The current rules at § 416.537(b)(2) provide that a penalty is not an adjustment of an overpayment and is imposed only against any amount due the penalized individual or, after death, any amount due the deceased which otherwise would be payable to his or her surviving eligible spouse. We propose to revise the rules at § 416.537(b)(2) to provide that a penalty is not an adjustment of an overpayment and is imposed only against any amount due the penalized individual or, after death, any amount due the deceased which otherwise would be paid to his or her survivor.

The current rules at § 416.538 permit no delay in a determination and payment of an underpayment otherwise due unless we can make a determination for an apparent overpayment before the close of the month following the month in which we discovered the underpayment. The proposed rules at § 416.538 will: (1) Maintain current rules regarding underpayments to eligible individuals and (2) add new rules which permit a postponement to enable us to resolve all overpayments, incorrect payments, adjustments, and penalties before we determine an underpayment and pay unpaid SSI benefits to an ineligible survivor or to an individual who is now ineligible. This change is intended to provide additional time to apply the rule in § 416.543 accurately and thus provides the best opportunity of collecting an overpayment from a survivor or a person who is ineligible for SSI. Further, there is not the same urgency in issuing unpaid benefits to an ineligible survivor or an ineligible individual as there is to an eligible individual because of the general absence of an established current need.

The current rules at § 416.583 provide that we can offset a penalty assessed against an individual's benefits against SSI benefits due the individual that are otherwise payable to his or her surviving eligible spouse. The proposed rules at § 416.536 provide that we can offset a penalty against SSI benefits due the deceased that are otherwise payable to a survivor.

The current rules at § 416.542(b) permit payment of SSI benefits due a deceased individual only to a surviving spouse who was eligible for SSI benefits and was living in the same household with the deceased in the month of death or was not separated from the individual for 6 months at the time of death. The proposed rules at § 416.542(b) will permit payment to the surviving member of an eligible couple, a surviving spouse who was not a member of an eligible couple, or a natural or adoptive parent (if the deceased was a blind or disabled child) where the requirements regarding living arrangements are met.

The proposed rules at § 416.542 will also prohibit payment of SSI benefits that may be due a deceased individual to a person who intentionally caused the death of the individual and will prohibit payment of such benefits to a survivor who requests the payment more than 24 months after the month of the individual's death. The first change is based on our longstanding policy of prohibiting a person who intentionally causes the death of another individual from profiting from that action. The second change responds to the need to set a reasonable administrative limit on the time a survivor may request payment of SSI benefits that may be due a deceased individual. The limit is set at

24 months to make the time the same as the title II rule for applying for lump-sum death benefits under § 404.391(b).

The current rules at § 416.543 give priority consideration to applying SSI benefits due a deceased individual and payable to a surviving eligible spouse against any overpayment to the spouse unless we have waived recovery. The proposed rules at § 416.543 extend this priority consideration to include benefits due a deceased individual and payable to a survivor who has received any overpayments unless we have waived recovery of the survivor's overpayment.

The proposed rules add the determinations concerning how much and to whom SSI benefits due a deceased individual will be paid to the list of administrative actions that are initial determinations at § 416.1402, extending administrative and judicial appeal rights to those determinations.

The current rules at § 416.1457(c)(4) authorize an administrative law judge (ALJ) to dismiss a request for a hearing if the person requesting the hearing dies, there are no other parties, and there is no information to show that the deceased may have an eligible spouse. Under the proposed rules at § 416.1457(c)(4), an ALJ may not dismiss the request for a hearing of a deceased individual if there is an eligible spouse or other survivor who could be qualified to receive the benefits and who wishes to pursue the request for hearing, or if the deceased individual authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act.

The current rules at § 416.1471(b) authorize the Appeals Council to dismiss a request for review if the person requesting the review or any other party to the proceedings dies and the record clearly shows that there is no other person who may be the deceased's eligible spouse who wishes to continue the action.

Under the proposed rules at § 416.1471(b), the Appeals Council may not dismiss the request for review of a deceased individual if there is an eligible spouse or survivor who could be qualified to receive the benefits and who wishes to continue the action or if the deceased individual authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because there will be no significant costs in implementing these proposed regulations. We estimate the cost (already budgeted) for implementing the legislation upon which these rules are based to be $3 million per fiscal year. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations do not impose recordkeeping or reporting requirements on the public.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program.)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: May 3, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: June 11, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

Subpart C of part 416 of chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

PART 416—[AMENDED]

1. The authority citation for subpart C continues to read as follows:

Authority: Secs. 1102, 1611, and 1631(a), (d), and (e) of the Social Security Act; 42 U.S.C. 1302, 1382, and 1383(a), (d), and (e).

2. In part 416, subpart C, § 416.340(d)(2) is revised to read as follows:

§ 416.340 Use of date of written statement as application filing date.

* * * * *

(d) * * *

(2) If the claimant dies after the written statement is filed, the deceased claimant's surviving spouse or parent, if the claimant is a blind or disabled child, who could be paid the claimant's benefits under § 416.542(b), or someone on behalf of the surviving spouse or parent files an application form. If we learn that the claimant has died before the notice is sent or within 60 days after the notice but before an application form is filed, we will send a notice to such a survivor. The notice will say that we will make an initial determination of eligibility for SSI benefits only if an application form is filed on behalf of the deceased within 60 days after the date of the notice to the survivor.

3. In part 416, subpart C, § 416.345(e)(2) is revised to read as follows:

§ 416.345 Use of date of oral inquiry as application filing date.

* * * * *

(e) * * *

(2) If the claimant dies after the oral inquiry is made, the deceased claimant's surviving spouse or parent, if the claimant is a blind or disabled child, who could be paid the claimant's benefits under § 416.542(b), or someone on behalf of the surviving spouse or parent files an application form. If we learn that the claimant has died before the notice is sent or within 60 days after the notice but before an application form is filed, we will send a notice to such a survivor. The notice will say that we will make an initial determination of eligibility for SSI benefits only if an application form is filed on behalf of the deceased within 60 days after the date of the notice to the survivor.

Subpart E of part 416 of chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for subpart E continues to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611(c), and 1631 (a), (b), (d), and (g) of the Social Security Act; 42 U.S.C. 1302, 1381, 1381(a), 1382(c), and 1383 (a), (b), (d), and (g).

2. In part 416, subpart E, § 416.533 is amended by revising the first sentence to read as follows:

§ 416.533 Transfer or assignment of benefits.

Except as provided in § 416.525 and subpart S of this part, the Social Security Administration will not certify payment of supplemental security income benefits to a transferee or assignee of a person eligible for such benefits under the Act or of a person qualified for payment under § 416.542.

* * * * *

3. In part 416, subpart E, § 416.536 is revised to read as follows:

§ 416.536 Underpayments—defined.

An underpayment can occur only with respect to a period for which a recipient filed an application, if required, for benefits and met all conditions of eligibility for benefits. An underpayment, including any amounts

of State supplementary payments which are due and administered by the Social Security Administration, is:

(a) Nonpayment, where payment was due but was not made; or

(b) Payment of less than the amount due. For purposes of this section, payment has been made when certified by the Social Security Administration to the Department of the Treasury, except that payment has not been made where payment has not been received by the designated payee, or where payment was returned.

4. In part 416, subpart E, § 416.537(b)(2) is revised to read as follows:

§ 416.537 Overpayments—defined.

* * * * *

(b) * * *

(2) *Penalty.* The imposition of a penalty pursuant to § 416.724 is not an adjustment of an overpayment and is imposed only against any amount due the penalized recipient, or, after death, any amount due the deceased which otherwise would be paid to a survivor as defined in § 416.542.

5. In part 416, subpart E, § 416.538 is revised to read as follows:

§ 416.538 Amount of underpayment or overpayment.

(a) *General.* The amount of an underpayment or overpayment is the difference between the amount paid to a recipient and the amount of payment actually due such recipient for a given period. An underpayment or overpayment period begins with the first month for which there is a difference between the amount paid and the amount actually due for that month. The period ends with the month the initial determination of overpayment or underpayment is made. With respect to the period established, there can be no underpayment to a recipient or his or her eligible spouse if more than the correct amount payable under title XVI of the Social Security Act has been paid, whether or not adjustment or recovery of any overpayment for that period to the recipient or his or her eligible spouse has been waived under the provisions of §§ 416.550 through 416.555. A subsequent initial determination of overpayment will require no change with respect to a prior determination of overpayment or to the period relating to such determination to the extent that the basis of the prior overpayment remains the same.

(b) *Limited delay in payment of underpaid amount to recipient or eligible surviving spouse.* Where an apparent overpayment has been detected but determination of the overpayment has not been made (see § 416.558(a)), a determination of an underpayment and payment of an underpaid amount which is otherwise due cannot be delayed to a recipient or eligible surviving spouse unless a determination with respect to the apparent overpayment can be made before the close of the month following the month in which the underpaid amount was discovered.

(c) *Delay in payment of underpaid amount to ineligible individual or survivor.* A determination of underpayment and payment of an underpaid amount which is otherwise due an individual who is no longer eligible for SSI or is payable to a survivor pursuant to § 416.542(b) will be delayed for the resolution of all overpayments, incorrect payments, adjustments, and penalties.

(d) *Reduction of underpaid amount.* Any underpayment amount otherwise payable to a survivor on account of a deceased recipient is reduced by the amount of any outstanding penalty imposed against the benefits payable to such deceased recipient or survivor under section 1631(e) of the Act (see § 416.537(b)(2)).

6. In part 416, subpart E, § 416.542 is amended by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 416.542 Underpayments—to whom underpaid amount is payable.

* * * * *

(b) *Underpaid recipient deceased—underpaid amount payable to survivor.* If a recipient dies before we have paid all benefits due or before the recipient endorses the check for the correct payment, we may pay the amount due to the deceased recipient's surviving eligible spouse who was living with the underpaid individual when he or she died or was not separated from him or her for 6 months at the time of death or to his or her surviving ineligible spouse who was living with the underpaid recipient within the meaning of section 202(i) of the Act (§ 404.347) in the month he or she died or within 6 months immediately preceding the month of such death. If the deceased underpaid recipient was a disabled or blind child in the month of death, the underpaid amount may be paid to the natural or adoptive parents of the child who lived with the child in the month he or she died or in the 6 months preceding death. No benefits may be paid to the estate of any underpaid recipient, the estate of the surviving spouse, or to any survivor other than those listed above. Payment of an underpaid amount to an ineligible spouse or to a surviving parent cannot be made for any months before June 1986. We will not pay benefits to a survivor who requests payment of an underpaid amount more than 24 months after the month of the individual's death.

(c) *Underpaid recipient's death caused by an intentional act.* No benefits due the deceased individual may be paid to a survivor found guilty by a court of competent jurisdiction of intentionally causing the underpaid recipient's death.

7. In part 416, subpart E, § 416.543 is revised to read as follows:

§ 416.543 Underpayments—applied to reduce overpayments.

We apply any underpayment due an individual to reduce any overpayment to that individual that we determine to exist (see § 416.558) for a different period, unless we have waived recovery of the overpayment under the provisions of §§ 416.550 through 416.555. Similarly, when an underpaid recipient dies, we first apply any amounts due the deceased recipient that would be payable to a survivor under § 416.542(b) against any overpayment to the survivor unless we have waived recovery of such overpayment under the provisions of §§ 416.550 through 416.555.

Example: A disabled child, eligible for payments under title XVI, and his parent, also an eligible individual receiving payments under title XVI, were living together. The disabled child dies at a time when he was underpaid $100. The deceased child's underpaid benefit is payable to the surviving parent. However, since the parent must repay an SSI overpayment of $225 on his own record, the $100 underpayment will be applied to reduce the parent's own overpayment to $125.

Subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for subpart N continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b; sec. 6 of Pub. L. 98-460, 98 Stat. 1802.

2. In part 416, subpart N, § 416.1402 is amended by adding paragraph (m) to read as follows:

§ 416.1402 Administrative actions that are initial determinations.

* * * * * *

(m) How much and to whom benefits due a deceased individual will be paid.

3. In part 416, subpart N, § 416.1457(c)(4) is revised to read as follows:

§ 416.1457 Dismissal of a request for a hearing before an administrative law judge.

* * * * *

(c) * * *

(4) You die, there are no other parties, and we have no information to show that you may have a survivor who may be paid benefits due to you under § 416.542(b) and who wishes to pursue the request for hearing, or that you authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act. The administrative law judge, however, will vacate a dismissal of the hearing request if, within 60 days after the date of the dismissal:

(i) A person claiming to be your survivor, who may be paid benefits due to you under § 416.542(b), submits a written request for a hearing, and shows that a decision on the issues that were to be considered at the hearing may adversely affect him or her; or

(ii) We receive information showing that you authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act.

4. In part 416, subpart N, § 416.1471(b) is revised to read as follows:

§ 416.1471 Dismissal by Appeals Council.

* * * * *

(b) You die, there are no other parties, and we have no information to show that you may have a survivor who may be paid benefits due to you under § 416.542(b) who wishes to pursue the request for review or that you authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act. The Appeals Council, however, will vacate a dismissal of the request for review if, within 60 days after the date of the dismissal:

(1) A person claiming to be your survivor, who may be paid benefits due to you under § 416.542(b), submits a written request for review, and shows that a decision on the issues that were to be considered on review may adversely affect him or her; or

(2) We receive information showing that you authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act.

[FR Doc. 90-21056 Filed 9-7-90; 8:45 am]
BILLING CODE 4190-11-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-405, RM-7232]

Radio Broadcasting Services; Kindred and Oakes, ND

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by CERM Broadcasting Corporation, seeking the substitution of Channel 224C3 for Channel 223C1, the reallotment of the channel from Oakes to Kindred, North Dakota, and the modification of its license for Station KDDR-FM, accordingly. Channel 224C3 can be alloted to Kindred in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 46-38-48 and West Longitude 97-00-54. Canadian concurrence is required since Kindred is located within 320 kilometers (200 miles) of the U.S.-Canadian border. In compliance with Section 1.420 of the Commission's Rules, we will not accept competing expressions of interest for use of Channel 224C3 at Kindred or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before October 29, 1990, and reply comments on or before November 13, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Frank R. Jazzo, Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, DC 20037-2679 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-405, adopted August 20, 1990, and released September 5, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-21174 Filed 9-7-90; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 55, No. 175
Monday, September 10, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Trade Suspension Reserves

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that neither a gasohol feedstock reserve nor a food security reserve for any storable agricultural commodity will be established pursuant to section 208(a) of the Agricultural Trade Suspension Adjustment Act of 1980 at the present time.

FOR FURTHER INFORMATION CONTACT: Robert A. Riemenschneider, Deputy Assistant Administrator, Commodity and Marketing Programs, Foreign Agricultural Service, U.S. Department of Agriculture, room 5087 South Building, Washington, DC 20250, telephone (202) 447–7791.

SUPPLEMENTARY INFORMATION: Section 208(a) of the Agricultural Trade Suspension Adjustment Act of 1980 (7 U.S.C. 4001(a)) authorizes the Secretary of Agriculture to establish a gasohol feedstock reserve or a food security reserve, or both, for a storable agricultural commodity if the President or other member of the executive branch of the Government restricts or suspends the export of such commodity to any country or region for reasons of national security of foreign policy and if the Secretary determines that the sanctions will result in a surplus supply of such commodity that will adversely affect producer prices. Pursuant to Executive Order 12722, which was later superseded by Executive Order 12724, the President has restricted the export of agricultural commodities to Iraq for reasons of national security and foreign policy. Pursuant to Executive Order 12725, the President has restricted the export of agricultural commodities to Kuwait for similar reasons. Despite the imposition of these restrictions, I have determined that neither a gasohol feedstock reserve nor a food security reserve for any storable agricultural commodity will be established at the present time.

Authority: 7 U.S.C. 4001(a).

Signed at Washington, DC, on September 5, 1990.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 90–21258 Filed 9–6–90; 1:30 pm]

BILLING CODE 3410–10–M

Forest Service

Exemption From Administrative Appeal

AGENCY: Forest Service, USDA.

ACTION: Exemption from administrative appeal, Supplement 1 to Beetledee Timber Sale Environmental Analysis, Shasta-Trinity National Forests.

SUMMARY: The Forest Service is exempting from appeal the decision resulting from Supplement Number 1 to the Beetledee Timber Sale Environment Assessment (EA). This supplement is being prepared in response to the damage from the Dee Fire of September 1989. During September 1989, an area in the McCloud River Drainage on the Shasta Lake Ranger District, Shasta-Trinity National Forests in California, was burned by wildfire and now needs restoration. Proposed restoration consists of rehabilitation of National Forest System Lands (NFSL) damaged by the wildfire and the recovery of dead and dying timber which is still merchantable.

The Dee Fire Salvage Sale proposes salvage logging of approximately one million board feet of dead timber from 45 acres. Tractor and skyline logging is planned and less than one-half mile of road construction will be required to remove fire affected timber. Restoration activities include erosion control activities, and reforestation with conifer seedlings.

Any further delay in the activities necessary to restore these damaged lands or remove this salvageable timber will result in degradation of the physical condition of the burned lands and a substantial deterioration of the fire-damaged timber.

Due to the length of time, it has taken to develop an acceptable restoration and rehabilitation program (including the development of a biological evaluation for spotted owls) and to properly evaluate its effects, the time remaining for program accomplishment has become critical. Additional delay would result in further damage to resources, and a significant loss of the salvageable timber volume and value.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decision for the Supplement Number 1 to the Beetledee Timber Sale EA. The decision authorizing the Dee Fire Salvage Sale will not be subject to administrative appeal and review.

EFFECTIVE DATE: This decision is effective September 10, 1990.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648, or to Wayne Eddy, District Ranger, Shasta Lake Ranger District, 6543 Holiday Road, Redding, CA 96003, (916) 275–1587.

ADDITIONAL INFORMATION: The majority of the Dee Fire was within the Beetledee Timber Sale Area and those fire-affected lands are currently being treated for salvage and rehabilitation by use of a catastrophic modification to the Beetledee Timber Sale Contract. The Dee Fre Salvage Timber Sale is within the environmental analysis area for the Beetledee Timber Sale, and adjacent to that sale. The EA supplement, which is the subject of this exemption, addresses analysis for those adjacent fire-affected lands. The decision for the supplement will be issued in early September 1990.

The anlaysis of the rate of deterioration of the dead and damaged timber indicates that approximatley 300 MBF, with an estimated stumpage value of $46,420, will be lost to decay as result of delay required to resolve an administrative appeal. The delay would also result in a loss of National Forest Receipts to Counties, as well as employment opportunities generated from harvest. Additionally, the reforestation of an estimated 45 acres of suitable land would be delayed at least another year, further reducing the opportunity for successful reforestation.

Dated: September 5, 1990.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 90-21246 Filed 9-7-90; 8:45 am]

BILLING CODE 3410-01-M

Rural Electrification Administration

Intent to Prepare an Environmental Assessment and Conduct a Public Information Meeting for a Proposed Project in Teller and Park Counties, CO

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to conduct a public information meeting and prepare an environmental assessment.

SUMMARY: The Rural Electrification Administration (REA), in cooperation with the Forest Service (FS), intends to conduct a public information meeting and prepare an Environmental Assessment (EA) in connection with a project proposed by Intermountain Rural Electric Association (IREA) of Sedalia, Colorado. IREA is proposing to construct a 115 kV transmission line from the Tarryall area in Park County to its Divide Substation in Teller County. The project will be initially operated at 69 kV. REA approval for the project is required and a FS permit is required for all of the right-of-way crossing through the Pike National Forest.

DATES: REA and FS will conduct a public information meeting at the following location: Divide Community Center, Intersection of U.S. Highway 24 & County Highway 67, Divide, Colorado, on September 27, 1990, at 7 p.m.

ADDRESSES: All interested parties are invited to submit written comments on the environmental aspects of the proposed project to REA or the FS prior to, at or within 30 days after the meeting in order for the comments to be part of the formal record. Written comments concerning the environmental aspects of the project should be sent to:

Mr. Martin G. Seipel, Director, Southwest Area—Electric, Rural Electrification Administration, room 0207, Agriculture South Building, 14th and Independence Avenue, Washington, DC 20250.

Mr. Clint Kyhl, South Park Ranger District, Pike National Forest, box 219, Fairplay, Colorado 80440.

FOR FURTHER INFORMATION CONTACT: Mr. Martin G. Seipel, Director, Southwest Area—Electric, above address, telephone: (202) 382-8848, or Mr. Clint Kyhl, South Park Ranger District, above address, telephone: (719) 836-2031.

SUPPLEMENTARY INFORMATION: REA, in order to meet its requirements under the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR parts 1500-1508) and REA Environmental Policies and Procedures 7 CFR part 1794, hereby gives notice that it intends in conjunction with the FS, to conduct a public information meeting and prepare an EA for the construction and operation of the Tarryall-Divide Transmission Line Project. The proposed project will be located in Park and Teller Counties, Colorado. REA may provide financing assistance for the project and FS will consider granting a right-of-way permit for those sections of the project crossing the Pike National Forest.

Alternatives to be considered by REA and the FS may include among other options: (1) No action, (2) energy conservation, (3) localized generation, (4) alternative routes, and (5) alternative structure designs.

The public meeting, conducted by representatives of REA and the FS, will be held to solicit public input and comments on the nature of the proposed project, alternative routes, any significant issues and environmental concerns that should be addressed in the EA. Details of four alternative routes will be identified in newspaper notices prior to the meetings. Requests for additional information concerning the meeting may be directed to REA or the FS at the addresses noted above.

REA's approval or FS's granting of a right-of-way permit will be subject to and contingent upon reaching satisfactory conclusions with respect to the environmental effects of the project, and final action will be taken only after compliance with environmental procedures required by NEPA have been satisfied.

Dated: September 4, 1990.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 90-21169 Filed 9-7-90; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Fairforest Creek Watershed, South Carolina

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83-566, and the Soil Conservation Service Guidelines (7 CFR part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Fairforest Creek Watershed project, Spartanburg and Union Counties, South Carolina.

FOR FURTHER INFORMATION CONTACT: Billy Abercrombie, State Conservationist, Soil Conservation Service, 1835 Assembly Street, Room 950, Columbia, South Carolina 29201, telephone (803) 765-5681.

SUPPLEMENTARY INFORMATION: A determination has been made by Billy Abercrombie that the proposed works of improvement for the Fairforest Creek project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Billy Abercrombie, State Conservationist, at the above address and telephone number. No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: August 24, 1990.

Billy Abercrombie,

State Conversationist.

[FR Doc. 90-21141 Filed 9-7-90; 8:45 am]

BILLING CODE 3410-16-M

CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

Meeting

AGENCY: Christopher Columbus Quincentenary Jubilee Commission.

ACTION: Notice of meeting.

SUMMARY: This notice announces a forthcoming meeting of the Christopher Columbus Quincentenary Jubilee Commission, a presidential commission established in 1984 (Pub. L. 98-375). The meeting will be held in Washington, DC and will be chaired by Commission Chairman John N. Goudie.

DATES: Committee Meetings: Tuesday, September 11, 1990, from 11:30 a.m. to 1:30 p.m., Program Committee (Closed); Tuesday, September 11, 1990, from 12 p.m. to 2 p.m., Public Relations and Events Committee (Closed); Tuesday, September 11, 1990, from 3 p.m. to 5

p.m., Culture Committee (Closed); Tuesday, September 11, 1990, from 3:30 p.m. to 5:30 p.m., Finance Committee (Closed); Wednesday, September 12, 1990, from 8 a.m. to 9 a.m., Maritime Committee (Closed). Plenary Session (morning session), from 9 a.m. to 12:30 p.m. (Closed); Plenary Session (afternoon session), from 1:30 p.m. to 5 p.m. (Closed).

ADDRESSES: All meetings will be held at One Washington Circle Hotel, 1 Washington Circle, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Raul de Quesada, Director, (202) 632-1992.

SUPPLEMENTARY INFORMATION: The Commission will review proposals for endorsement submitted by interested individuals and organizations.

Raul de Quesada,

Director.

[FR Doc. 90-21143 Filed 9-7-90; 8:45 am]

BILLING CODE 6820-RB-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-605]

Frozen Concentrated Orange Juice From Brazil, Preliminary Results and Termination in Part of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results and termination in part of antidumping duty administrative review.

SUMMARY: In response to a request by respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil. The review covers four producers and/or exporters of this merchandise to the United States and the period May 1, 1988 through April 30, 1989. We preliminarily determine the weighted-average dumping margins for this period to range from zero to 0.06 percent. Because Frutropic S.A., Citrovale S.A., and Branco Peres Citrus S.A. withdrew their requests for review, we are terminating the review with respect to those firms. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: September 10, 1990.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 1989, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (54 FR 18918) of the antidumping duty order on frozen concentrated orange juice from Brazil (52 FR 16426; May 5, 1987). In May 1989, seven respondents, Citrosuco Paulista S.A., Cargill Citrus Ltda., Coopercitrus Industrial Frutesp S.A., Montecitrus Trading S.A., Frutropic S.A., Citrovale S.A., and Branco Peres Citrus S.A., requested an administrative review of the order. We initiated the review, covering the period May 1, 1988 through April 30, 1989, on June 21, 1989 (54 FR 26069). Because Frutropic S.A., Citrovale S.A., and Branco Peres Citrus S.A. subsequently withdrew their requests for review, the Department is terminating the review of their sales for this period. The Department has now conducted the review for the remaining companies in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). The final results of the last administrative review were published on June 29, 1990 (55 FR 26721).

Scope of the Review

Imports covered by the review are shipments of frozen concentrated orange juice (FCOJ) from Brazil. During the review period, such merchandise was classifiable under item 165.29 of the *Tariff Schedules of the United States* (TSUS). The merchandise is currently classifiable under item 2009.11.00 of the *Harmonized Tariff Schedule* (HTS). The TSUS and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period May 1, 1988 through April 30, 1989 and four producers and/or exporters of Brazilian FCOJ to the United States: Citrosuco Paulista S.A., Cargill Citrus Ltda., Coopercitrus Industrial Frutesp S.A., and Montecitrus Trading S.A.

The review of this period with respect to Frutropic S.A., Citrovale S.A., and Branco Peres Citrus S.A. is being terminated.

United States Price

In calculating the United States price, we used both purchase price and exporter's sales price (ESP) as defined in section 772 of the Tariff Act. Purchase price was used for those sales to the United States which were made prior to importation, while exporter's sales price was used for those sales which were made after importation.

Purchase price was based on the packed f.o.b. price to unrelated purchasers in the United States. ESP was based on the packed delivered price to the first unrelated purchaser in the United States. For purchase price sales, where applicable, we made deductions for Brazilian brokerage expenses, discounts, export taxes, port fees, foreign inland freight and insurance. For ESP sales, we made deductions for discounts, W.S. duty and Customs' fees, harbor maintenance fees, U.S. inland freight and insurance, brokerage and handling expenses, ocean freight and marine insurance, credit expenses and indirect selling expenses. Where foreign market value was based on home market prices, we made an addition to U.S. price for taxes which were not collected by reason of exportation of the merchandise to the United States. No other adjustments were claimed or allowed.

Foreign Market Value

The Department based foreign market value on ex-factory or delivered prices to unrelated purchasers in the home market or on third country f.o.b. prices, in accordance with section 773 of the Tariff Act. We made deductions, where appropriate, for foreign inland freight, marine insurance, and export taxes. Where applicable, we deducted foreign packing expenses and added U.S. packing to home market price (packing costs were not incurred on bulk sales). We adjusted foreign market value for differences in credit expenses, post-sale warehousing expenses, indirect taxes, and differences in the physical characteristics of the merchandise.

In the case of comparisons to ESP sales, we made an adjustment for indirect selling expenses, limited by the amount of indirect selling expenses incurred in the United States. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following weighted-average margins exist for the period May 1, 1988 through April 30, 1989:

Manufacturer/Exporter	Margin (percent)
Citrosuco Paulista S.A.	0.06
Cargill Citrus Ltda.	zero
Coopercitrus Industrial Frutesp S.A.	zero
Montecitrus Trading S.A.	zero

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, because there was no margin for Cargill Citrus Ltda., Coopercitrus Industrial Frutesp S.A. and Montecitrus Trading S.A., and the margin for Citrosuco Paulista S.A. was *de minimis*, no cash deposit will be required for these manufacturers. For shipments from the remaining known manufacturers or exporters not covered by this review, the cash deposit will continue to be at the rate established in the final results of the last administrative review (55 FR 26721; June 29, 1990) or the antidumping duty order (52 FR 16426; May 5, 1987), as applicable. For any future entries of this merchandise from a new exporter not covered in this or prior reviews, whose first shipments occurred between May 1, 1988 and April 30, 1989, and who is unrelated to any reviewed firm, a cash deposit shall not be required. These deposit requirements/waivers are effective for all shipments of Brazilian FCOJ entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than ten days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 353.38(c), are due.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 31, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-21111 Filed 9-7-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-020]

Pig Iron From Canada Revocation of Antidumping Finding

AGENCY: International Trade Administration/ Import Administration Department of Commerce.

ACTION: Notice of revocation of antidumping finding.

SUMMARY: The Department of Commerce has determined to revoke the antidumping finding on pig iron from Canada, because it is no longer of any interest to interested parties.

EFFECTIVE DATE: July 2, 1990.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-4195/ 5255.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 1990, Department of Commerce ("the Department") published in the Federal Register its intent to revoke the antidumping finding on pig-iron from Canada (36 FR 13780, July 24, 1971).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this finding on each interested party listed on the service list. Interested parties who might object to the revocation were provided the opportunity to submit their comments no later than 30 days from the date of publication.

Scope of the Finding

The United States, under the auspicies of the Custom Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedules (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item numbers. Imports covered by this finding are shipments of pig iron, which is used in steel production and in the iron foundry industry for making iron castings such as pipe, automobile castings, and machine parts. Through 1988, such merchandise was classifiable under item numbers 606.1300 and 606.1500 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item numbers 7201.10.00, 7201.20.00, 7201.30.00, 7206.10.00, and 7206.90.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Determination to Revoke

The Department may revoke an antidumping finding or order if the Secretary of Commerce concludes that the finding or the order is no longer of interest to interested parties. We conclude that there is no interest in an antidumping finding or order when no interested party has requested an administrative review for four consecutive periods (19 CFR 353.25(d)(4)(i)(1990)) and when no interested party objects to the revocation.

In this case, we received no requests to conduct an administrative review pursuant to our notices of Opportunity to Request Administrative Review for four consecutive periods (52 FR 25455, July 7, 1987; 53 FR 26298, July 12, 1988; 54 FR 27920, July 3, 1989; 55 FR 28273, July 10, 1990). Furthermore, we received no objections to our notice of intent to revoke the antidumping finding (55 FR 27291). Based on these facts, we have concluded that the antidumping finding covering pig iron from Canada is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping finding in accordance with 19 CFR 353.25(d)(4)(iii).

The revocation applies to all unliquidated entries of pig iron from Canada entered, or withdrawn from warehouse, for consumption on or after July 2, 1990. Entries made during the period July 1, 1989 through July 1, 1990 will be subject to automatic liquidation in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after July 2, 1990, without regard to antidumping duties, and to refund any

estimated antidumping duties collected with respect to those entries.

This notice is in accordance with 19 CFR 353.25.

Dated: August 29, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-21110 Filed 9-7-90; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

September 4, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 11, 1990.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 52047, published on December 20, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

September 4, 1990.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of December 14, 1989, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the period January 1, 1990 through December 31, 1990.

Effective on September 11, 1990 you are directed to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category levels not in a group	Adjusted 12-month limit [1]
200	593,436 kilograms.
239	2,480,868 kilograms.
333	43,868 dozen.
444	111,084 numbers.
636	422,682 dozen.
638/639	2,294,082 dozen.
642	286,821 dozen.
659-C [2]	294,940 kilograms.
659-H [3]	2,395,834 kilograms.
659-S [4]	538,538 kilograms.
831	351,761 dozen pairs.
835	69,661 dozen.
842	141,744 dozen.
847	1,103,717 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6080, 6505.90.7060 and 6505.90.8060.

[4] Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall with the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Phillip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-21142 Filed 9-7-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, applicable form, and applicable OMB control number. Freight Carrier Qualification Statement/Required Documents MT Forms 377-R, 378-R, 379-R, 380-R, 381-R, 381-2-R and 381-3-R.

Type of request: New.

Average burden hours/minutes per response: 16 Hours.

Responses per respondent: One per respondent.

Number of respondents: 1,400.

Annual burden hours: 22,400.

Annual responses: 1,400.

Needs and uses: Information is vital in determining capability to perform quality service transporting DOD freight. Will furnish MTMC information to determine if individuals or associated companies are affiliated with Government-debarred carriers. Will also reflect carrier's financial stability. There is no other reporting system for Class III carriers.

Affected public: Businesses or other for-profit.

Frequency: On Occasion.

Respondent's obligation: Required to obtain or retain a benefit.

OMB desk officer: Dr. Timothy Sprehe

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

DOD clearance officer: Mr. William P. Pearce.

Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia, 22202-4302.

Dated: September 4, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-21153 Filed 9-7-90; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary of Defense

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, 11 October 1990.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, NY 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d)(1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: September 4, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–21155 Filed 9–7–90; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Notice of Advisory Committee Meeting

SUMMARY: Working Group A (mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, 4 October 1990.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2940 Presidential Drive, Suite 210, Fairborn, Ohio.

FOR FURTHER INFORMATION CONTACT: Becky F. Terry, AGED Secretariat, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d)(1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: September 4, 1990.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 90–21156 Filed 9–7–90; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices

Advisory Committee Meeting

SUMMARY: Working Group C (mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday and Wednesday, 9–10 October 1990.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2940 Presidential Drive, Suite 210, Fairborn, Ohio.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d)(1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: September 4, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–21157 Filed 9–7–90; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Chemical Weapons Policy

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Chemical Weapons Policy will meet in closed session on September 19, 1990 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will consider a possible US and Soviet agreement on banning the use of chemical weapons.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended, (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: September 4, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-21154 Filed 9-7-90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 25 September 1990.

Time: 0900-1400 hours.

Place: Fort Knox, Kentucky.

Agenda: The Army Science Board Ad Hoc Subgroup on Electromagnetic and Electrothermal Technologies will meet to review Armor/Antiarmor topics and threat projections. This meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrator Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90-21286 Filed 9-7-90; 8:45 am]

BILLING CODE 3710-8-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ90-8-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 31, 1990.

Take notice that on August 29, 1990, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following substitute revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Second Substitute Ninth Revised Sheet No. 8
Second Substitute Ninth Revised Sheet No. 9

Carnegie states that, pursuant to § 154.308 of the Commission's regulations and the Commission's Order Nos. 483 and 483-A, it is proposing an Out-of-Cycle PGA to reflect recent rate changes implemented by its pipeline supplier—Texas Eastern Transmission Corp.—and revised projections regarding spot gas usage and prices. The revised rates are proposed to become effective September 1, 1990, and reflect the following changes from Carnegie's last fully-supported PGA filing in Docket No. TQ90-3-63-000: a $.2903 per Dth decrease in the commodity components of its LVWS and CDS Rate Schedules; a $.2874 per Dth decrease in the commodity component of its LVIS Rate Schedule; a $.0038 per Dth decrease in the D-1 component of its LVWS and CDS Rate Schedules, and $.0006 per Dth increase in the D-2 component of its LVWS and CDS rates. Carnegie also proposes to decrease its DCA charge by $.0001 per Dth. Carnegie's negative $.0208 surcharge to the commodity components of its sales rates remains unchanged. Carnegie's Standby Adjustment stated in this filing is $.1089 per Dth.

Carnegie states that copies of its filing were served on all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21114 Filed 9-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP77-335-002]

Colorado Interstate Gas Co.; Petition To Vacate Order in Part

August 31, 1990.

Take notice that on August 24, 1990, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed a petition in Docket No. CP77-335-002 to vacate in part an order approving the reinstatement of the operation of four abandoned facilities, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

CIG states that the Rolla Sales Meter Station (Rolla Station) located in Morton County, Kansas was originally constructed in 1958 to deliver gas to Panhandle Eastern Pipe Line Company for a short-term sale pursuant to an order issued in Docket No. G-14813. CIG indicates that in Docket No. CP77-335 it filed for and received permission and approval by order issued on June 21, 1977, to abandon the Rolla Station along with twelve other minor measurement and related facilities formerly used in connection with gas sales and exchange arrangements. It is then indicated that CIG sought and obtained authorization by order issued July 21, 1980, to reinstate the Rolla Station along with three other abandoned facilities. CIG states that no gas flowed through the Rolla Station since the order authorizing the reinstating of the facility and that it does not anticipate using this meter in the future.

CIG requests that the July 21, 1980, order be vacated in part to allow the abandonment of the Rolla Station.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 21, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further

notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CIG to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21119 Filed 9-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-70-000]

Equitrans, Inc.; Informal Settlement Conference

August 31, 1990.

Take notice that a conference will be convened in the above-captioned proceeding on September 12, 1990 at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become party must move the intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Arnold H. Meltz (202) 208-0737 or Jennifer B. Corwin (202) 208-0740.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21117 Filed 9-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-171-000]

Texas Gas Pipe Line Corp.; Request for Waiver of Annual PGA

August 31, 1990.

Take notice that on August 28, 1990, Texas Gas Pipe Line Corporation (TGPL) requests that the Commission waive § 154.304(c) of the Commission's regulations, 18 CFR 154.304(c), which requires that TGPL file by August 31, 1990, its annual PGA to be effective November 1, 1990. Should this request for a waiver of the requirements to file its annual PGA not be granted, TGPL requests that it be permitted to file another quarterly PGA, in lieu of its annual PGA, not later that September 28, 1990, to be effective November 1, 1990.

TGPL states that it has only two sales customers, Texas Eastern Transmission Corporation (Tetco) and Transcontinental Gas Pipe Line Corporation (Transco). Transco, since July 14, 1990, has not purchased any gas and on August 21, 1990, gave notice of its intent to cancel its Service Agreement with TGPL. Tetco is only taking 3,540 Mcf/d, a volume insufficient to permit economic operation of its facilities. TGPL has not been successful in finding anyone to replace Transco and has notified both customers of the necessity to seek Commission authority to abandon its facilities and services. This abandonment application will be filed not later than September 14, 1990. TGPL has no reason to believe that either Tetco or Transco will oppose its abandonment application.

TGPL, pursuant to order issued July 25, 1990, in Docket No. TQ90-3-58-000 was permitted to place its PGA rates into effect August 1, 1990, subject to certain conditions. TGPL does not anticipate selling gas after October 31, 1990.

TGPL, states that a copy of this filing was served on each of its customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21116 Filed 9-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-2078-000]

Transcontinental Gas Pipe Line Corp.; Request Under Blanket Authorization

August 31, 1990.

Take notice that on August 27, 1990, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP90-2078-000 a request pursuant to §§157.205 and 157.211 of the Commission's Regulations for authorization to construct and operate a sales tap under Transco's blanket certificate issued in Docket Nos. CP82-426-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commisssion and open to public inspection.

Transco proposes to construct and operate a new sales tap and appurtenant facilities in order to serve Panda Energy Corporation (Panda), a cogenerator. It is stated that Transco has agreed to install a ten-inch tap valve that would be owned, operated and maintained by Transco. Transco states that the sales tap would be located upstream of Panda's facilities at an interconnection with Transco's South Virginia Lateral in the vicinity of Mile Post 110.33, in Northampton County, North Carolina. Transco indicates that Panda has constructed and owns a ten-inch nonjurisdictional natural gas pipeline and is currently constructing a meter station and appurtenant facilities (Panda Pipeline) with such pipeline extending from Panda's cogeneration facilities in Roanoke Rapids, North Carolina, to proposed point of interconnection with Transco. Panda Pipeline would be operated by North Carolina Natural Gas Corporation.

It is estimated that the proposed facilities would cost $56,000. It is stated that Transco would be directly reimbursed by Panda for costs of the proposed facilities.

It is stated that Panda has requested that Transco provide the following transportation services at the proposed sales tap: (1) firm transportation of 3,500 Mcf per day and (2) interruptible transportation of up to 46,500 Mcf per day. Tansco indicates that the firm service would be provide pursuant to Transco's Natural Gas Act Section 7(c) application filed in Docket No. CP90-687-000. Transco state that the interruptible service would be provided pursuant to Transco's blanket authorization in Docket No. CP88-328-000. Transco states that it would charge Panda rates in accordance with the applicable Rate Schedule IT under Transco's FERC Gas Tariff and the proposed FT-NT Rate Schedule in Docket No. CP90-687-000.

Transco states that the proposed facilities would have no effect on Transco's peak day or annual deliveries to any existing customer.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be

authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

FR Doc. 90-21118 Filed 9-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-27-025 RP89-264-021 RP89-138-010]

United Gas Pipe Line Co.; Tariff Filing

August 31, 1990.

Take notice that on August 28, 1990, United Gas Pipe Line Company (United) tendered for filing the following Tariff Sheets as part of its FERC Gas Tariff, both First Revised Volume No. 1 and Second Revised Volume No. 1:

First Revised Volume No. 1

Effective April 1, 1989

Sub. Fourth Revised Sheet No. 4-G1
Sub. Fourth Revised Sheet No. 4-H
Sub. Fourth Revised Sheet No. 4-I
Sub. Fourth Revised Sheet No. 4-J
Sub. Fourth Revised Sheet No. 4-K
Sub. Fourth Revised Sheet No. 4-L

Second Revised Volume No. 1

Effective November 30, 1989

Sub. Second Revised Sheet No. 4-J
Sub. First Revised Sheet No. 4-J.1
Sub. First Revised Sheet No. 4-J.2
Sub. First Revised Sheet No. 4-J.3
Sub. First Revised Sheet No. 4-J.4
Sub. First Revised Sheet No. 4-J.5
Sub. First Revised Sheet No. 4-J.6
Sub. First Revised Sheet No. 4-J.7

United States that the referenced tariff sheets reflect the net result of (i) the elimination of the take-or-pay costs in the form of transportation-related credits disallowed by the June 19 Order and (ii) the incorporation of 50% of the jurisdictional portion of the take-or-pay buyout and buy-down attributable to transportation credits actually incurred by United through July 31, 1990 that are eligible for recovery under the Commission's "known and measurable" test established in *ANR Pipeline Company*, 48 FERC 61,140 (1989) from the total amount of the take-or-pay costs in the original filings. United also states that the reincorporated costs in this filing represent a portion of the transportation-related credits that were disallowed by the Commission's June 19 Order.

United also requested withdrawal of the tariff sheets filed August 21, 1990, and in lieu thereof, hereby tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, and Second Revised Volume No. 1 set forth above.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 383.211 of the Commission's Regulations. All such petitions or protests should be filed on or before September 10, 1990.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene in accordance with the Commission's Regulations. Copies of this filing are on file with the Commission and are also available in United's offices in Houston, Texas and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21115 Filed 9-7-90; 8:45am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-16-NG]

Inter-City Minnesota Pipelines Ltd., Inc., Northern Minnesota Utilities, and ICG Utilities (Ontario) Ltd.; Joint Application To Reassign Authority To Import and Export Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of joint application to reassign authorization to import and export natural gas from and to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of a joint application filed on March 13, 1990, by Inter-City Minnesota Pipelines Ltd., Inc. (Minnesota Pipelines), Northern Minnesota Utilities (NMU), and ICG Utilities (Ontario) Ltd (ICG Utilities) to have the import and export authorization held by Minnesota Pipelines reassigned to NMU and ICG Utilities. The application was supplemented on April 19, 1990, amended on May 18 and June 13, 1990, and further supplemented on July 3, August 21, and August 24, 1990.

Minnesota Pipelines proposes to "unbundle" its current gas sales arrangements to NMU and ICG Utilities and in the process would terminate its gas purchase contracts with its Canadian supplier, ICG Transmission Holdings Limited (ICG Transmission), relative to the NMU and ICG Utilities gas. Minnesota Pipelines intends to become solely a transporter rather than a purchaser and reseller of gas. NMU and ICG Utilities would each buy gas directly from Canadian suppliers with Minnesota Pipelines transporting this gas. An essential part of the unbundling is the applicants' request in this proceeding that the authorization to import and export gas from and to Canada held by Minnesota Pipelines for gas resold to NMU and ICG Utilities be reassigned to the former sales customers. Approval of this application would involve no modification or construction of pipeline facilities.

Although the applicants request that Minnesota Pipelines' import and export authority be reassigned, the terms of the unbundling arrangement differ significantly from the terms of the existing authorization and the total volumes would exceed those already authorized. Therefore, as a matter of procedural policy the DOE is treating the filing as applications by NMU and ICG Utilities for new authority and an application by Minnesota Pipelines to have its present authority rescinded. Once the proposed unbundling process is complete, Minnesota Pipelines' authorization would no longer be necessary.

The application is filed pursuant to section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, notices of intervention, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., October 10, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4819.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

I. Background

Minnesota Pipelines is the United States portion of a single pipeline that

operates between points in Canada and points in the U.S., weaving in and out of northern Minnesota. The Canadian portion is ICG Transmission. The integrated pipeline begins at an interconnection with TransCanada Pipe Lines Limited (TransCanada) near Spruce, Manitoba, and extends to the international border near Sprague, Manitoba. From this point, it travels east through northern Minnesota to Baudette, Minnesota, where the pipeline reenters Canada. It then crosses back into the U.S. at International Falls, Minnesota, where it terminates.

Both Minnesota Pipelines and its Canadian counterpart, ICG Transmission, are subsidiaries of Westcoast Energy, Inc. (Westcoast). ICG Utilities is a Canadian natural gas distribution utility. It is also a subsidiary of Westcoast. ICG Utilities manages and operates both ICG Transmission and Minnesota Pipelines. NMU is an operating division of Utilicorp United, Inc., that supplies gas utility service to 44 towns in Minnesota.

II. The Existing Import Arrangement

Minnesota Pipelines imports its entire gas supply from ICG Transmission which, in turn, buys from TransCanada. Minnesota Pipelines' services are limited to transporting for ICG Transmission gas that is sold to ICG Utilities solely for consumption in Canada, and to sales within Minnesota to two customers, NMU and the City of Warroad. Minnesota Pipelines is currently authorized to import up to 14,602 MMcf of firm supplies of natural gas annually from ICG Transmission through its pipeline facilities crossing the border at Sprague. A portion of this gas is delivered to both NMU and Warroad (up to 200 MMcf per year each) off the first leg of the pipeline for sale in western Minnesota. The balance of the gas (up to 14,202 MMcf per year) continues through the pipeline is then exported to Ontario Province at Baudette. In Ontario, some of this gas is sold by ICG Transmission to ICG Utilities (up to 5,502 MMcf annually). Finally, the remaining volumes (up to 8,700 MMcf per year) are imported by Minnesota Pipelines a second time into the U.S. near International Falls, where they are sold to NMU. Minnesota Pipelines' import/export authority expires October 31, 1995.

III. The Application

According to the application, Minnesota, Pipelines, ICG Transmission, and their sales customers have reached agreements whereby the pipelines would cease to be purchasers and resellers of gas and would become solely transporters, leaving ICG Utilities, NMU and Warroad free to negotiate directly and independently for the purchase of gas from Canadian suppliers. It is noteworthy that these customers have already been negotiating their own pricing terms with TransCanada which Minnesota Pipelines and ICG Transmission have incorporated into their current gas purchase contracts. Converting to the new service arrangements is premised on NMU, ICG Utilities, and Warroad importing and exporting the gas themselves. NMU and ICG Utilities would import and export gas from and to Canada under the authority requested in this application beginning on the date when Minnesota Pipelines and ICG Transmission obtain all regulatory authorizations acceptable to the parties to implement their proposed new service arrangements.

A. ICG Utilities

ICG Utilities requests authorization until November 1, 1990, to import at Sprague and subsequently export at Baudette, up to 5,502 MMcf annually for exclusive use in Canada. The gas would be imported and exported solely as part of a transportation arrangement, and would not be sold or stored in the U.S.

B. NMU

NMU requests authorization to import through October 31, 2002, up to 11,445 MMcf annually of firm supplies at Sprague, up to 560 MMcf of this volume for sale annually in western Minnesota, then authorization to export back to Canada at Baudette, and reimport at International Falls the remaining 10,885 MMcf annually. Further, NMU proposes to import, export, and reimport additional interruptible volumes of up to 33.2 MMcf annually.

The application, as amended, includes two contracts under which NMU would purchase gas from Western Gas Marketing Limited (WGML), an indirect subsidiary of TransCanada. One is a proposed contract titled the "Direct Sale Contract" that is part of a precedent agreement dated December 14, 1989, in which both parties agree to execute the Direct Sale Contract when the new transportation service arrangement is approved. It covers the period from the time of the unbundling through October 31, 1991. The second, titled the "Gas Sales Contract", was signed June 15, 1990 and would succeed the Direct Sale Contract, becoming effective on November 1, 1991, and extending through October 31, 2002. Both contracts give NMU the right to purchase on an interruptible basis volumes of "overrun" gas, i.e., volumes which WGML has available to sell to NMU in excess of daily contract quantities. The price of overrun gas on any day would be negotiated by NMU and WGML.

The following summarizes the principal provisions of NMU's two purchase agreements with WGWL.

1. Direct Sale Contract

The proposed Direct Sale Contract provides for the delivery and sale to NMU of 21,063 Mcf of gas per day during the period before November 1, 1990, and 26,358 Mcf per day thereafter. It has identical pricing provisions to those presently in effect under Minnesota Pipelines' gas purchase agreement with ICG Transmission for sales to NMU. Under this contract, title to the gas would pass from WGML to NMU at the point where the pipeline facilities of TransCanada interconnect with ICG Transmission near Spruce, Manitoba. NMU must bear separately the cost of pipeline transportation by ICG Transmission from Spruce to the international border. The price NMU would pay WGML is comprised of a two-part, demand and commodity charge. The monthly demand charge would be equal to the sum of the demand tolls of TransCanada and Nova Corporation of Alberta (Nova) for their transportation of the gas in Canada. The contract provides for different commodity charges depending on the market involved. The initial commodity charge for gas resold to Boise Cascada Corporation (Boise Cascade), NMU's largest single customer and the operator of a paper mill at International Falls and the adjoining Canadian city of Fort Francis, would be $1.60 (U.S.) per MMBtu. The commodity charge for the balance of the gas, excluding overrun gas, would be $1.99 (U.S.) per MMBtu for volumes consumed in western Minnesota and $1.81 (U.S.) per MMBtu for eastern Minnesota volumes.

Minnesota Pipelines' supplemental filing of April 19, 1990, indicated that the two-part rate in the Direct Sale Contract would have resulted in a border price to NMU on April 3, 1990, of $2.39 (U.S.) per MMBtu for gas destined to be consumed by Boise Cascade. The remainder of NMU's imports for resale in western and eastern Minnesota would have been $2.76 (U.S.) and $2.73 (U.S.) per MMBtu, respectively.

There is no minimum take or minimum commodity bill in the Direct Sale Contract, but the total monthly demand charges in the demand component of the two-part rate applicable to the imported gas must be paid regardless of the level of takes. There are price renegotiation and arbitration provisions. However,

they would be inoperative in light of the Gas Sale Contract which trakes effect November 1, 1991.

2. *Gas Sales Contract*

The Gas Sales Contract of June 15, 1990, contains provisions similar to those in the Direct Sale Contract described above. The daily contract quantity beginning November 1, 1991, would be 26,358 Mcf of which 20,000 Mcf is Boise Cascade gas. When WGML obtains an additoinal 5,000 Mcf per day of transportation capacity on TransCanada, the daily volumes would increase to 31,358 Mcf, of which 25,000 Mcf per day is for Boise Cascade. As in the first contract, the price to be paid by NMU for firm gas under the Gas Sales Contract is computed using a two-part rate that would include the monthly demand charges billed by TransCanada and Nova for deliveries to Spruce, Manitoba, and a market differentiated commodity charge. Like the Direct Sale Contract, this contract imposes a minimum bill equal to the total demand charges that NMU would pay regardless of the level of takes. The price of overrun gas would be negotiated monthly by NMU and WGML.

a. *Boise Cascade Volumes.* The commodity charge for gas to be resold to Boise Cascade consists of (1) a base price adjusted each year calculated by multiplying an initial base price at the Alberta border of $1.75 (CN) per Cigajoule (GJ) (one GJ equates to approximately 0.95 MMBtu and 0.95 Mcf) by a fraction that reflects the price being paid for gas by all of WGML's long-term firm customers at the Alberta border; and (2) the TransCanada commodity transportation toll plus fuel costs from Express to Spruce, Manitoba. These volumes are subject to a 60 percent minimum annual take provision. NMU must pay a gas inventory charge of $0.45 (CN) per GJ levied on the volumes not taken below the minimum quantity. If NMU fails to take the minimum volume over the succeeding two contract years, taking into account any overrun volumes, WGML would have the right to permanently reduce the daily quantity of gas it is obligated to supply up to the amount of the shortfall.

The Gas Sales Contract contains a provision that permits renegotiation of the Boise Cascade pricing terms every three years, and absent agreement during the renegotiation process, arbitration. Renegotiation would be focused on determining a price that is competitive with and comparable to (1) the prices being paid by purchasers under long-term contracts in other North American gas markets for gas supplied from Alberta; (2) the price for long-term firm supplies of gas available to Boise Cascade for delivery to its International Falls facility; and (3) the prices of alternate energy sources other than wood waste and/or coal that compete with gas for end-use at the Boise Cascade facility at International Falls.

NMU's supplemental filings of August 21 and 24, 1990, indicate that if the gas were now flowing under the terms of the Gas Sales Contract, the demand and commodity charges paid for deliveries at the international border for resale to Boise Cascade would be $13.331 (U.S.) per Mcf per month and $1.6974 (U.S.) per Mcf, respectively. Combining the two charges would result in a total price at 100 percent load factor of $2.1357 (U.S.) per Mcf.

b. *Western and Eastern Minnesota Volumes.* The initial price for gas resold to communities in western and eastern Minnesota has not yet been determined. The Gas Sales Contract prescribes that NMU and WGML will begin negotiations by June 1, 1991, to establish the commodity rates paid in the first contract year. The price provisions regarding these volumes are subject to annual renegotiation, and failing agreement, arbitration. Pricing considerations for western and eastern Minnesota gas would be essentially the same as for the Boise Cascade volumes. The objective is to arrive at prices that are competitive with and comparable to (1) the prices being paid by purchasers under long-term firm contracts in other North American gas markets for gas supplied from Alberta; (2) the price for long-term firm supplies of gas that compete in the same markets as those served by WGML; and (3) the prices of alternate energy sources that compete with gas for end-use in the markets served by WGML.

IV. DOE Evaluation

This application to enable NMU and ICG Utilities to import and export for themselves gas that they now acquire under an authorization granted to Minnesota Pipelines will be reviewed pursuant to section 3 of the NGA and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. Decisions on applications for import authority are made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters that may be considered in making a public interest determination on gas import applications include need for the gas and security of the long-term supply. In reviewing natural gas export applications the DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate in a particular case.

The import/export authority requested by ICG Utilities, involves Canadian gas which is only moving through and not being sold or stored within the U.S. Therefore, the DOE believes that it is not necessary to consider in its evaluation competitiveness, need for the gas, or security of supply with respect to ICG Utilities proposed import, nor domestic need for the gas with respect to its proposed export. The only relevant issue in this proceeding bearing on the public interest would be the potential impact that the authorization may have on Minnesota Pipelines' other shippers.

NMU's import/export proposal will be subject to the normal import review criteria. However, since the export would involve transportation but no sale of domestic gas in Canada, the DOE believes that the requirement to consider domestic need in the decision on the export portion of NMU's proposal is unnecessary.

The applicants assert that the proposed imports/exports would be in the public interest. Parties opposing the proposal bear the burden of overcoming this assertion.

All parties should be aware that if this joint application is approved, NMU's authorization would be conditioned on the filing of quarterly reports indicating the volumes imported and exported, and the purchase price. ICG Utilities would be required to report only the volumes it imports and exports.

Nepa Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding.

although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of this application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 3, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–21171 Filed 9–7–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3829–1]

Open Meeting on Issues Related to the Implementation and Reauthorization of the Safe Drinking Water Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meeting.

SUMMARY: The purpose of this meeting is to discuss issues related to the implementation and reauthorization of the Safe Drinking Water Act (SDWA), as amended. Invited representatives from the Environmental Protection Agency (EPA), States, environmental groups, and business and industry will engage in a roundtable discussion of current implementation issues under the SDWA, issues that might arise in the future, possible programmatic changes that might facilitate implementation under the present law, and issues related to reauthorization of the Act.

This meeting will consist of three sessions. The first session will be a full-day discussion of the Public Water Supply Program. The second day of the meeting will consist of two sessions; the first session will address the Underground Injection Control Program and the second session will focus on the Groundwater Protection Program. Observers are welcome at all sessions. At the conclusion of each session the floor will be open for a general discussion period, at which time public participation is encouraged.

TIME AND DATE: 9 a.m. to 5 p.m., September 26 through 27, 1990.

PLACE: Marriott Crystal Gateway Hotel, 1700 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David W. Schnare, EPA, Office of Drinking Water, 401 M Street SW., Washington, DC 20460; telephone (202) 382–5541.

LaJuana S. Wilcher,

Assistant Administrator for Water.

[FR Doc. 90–21159 Filed 9–7–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3828–9]

Senior Executive Service Performance Review Board Membership

AGENCY: President's Council on Integrity and Efficiency (PCIE).

ACTION: Notice.

SUMMARY: Notice is hereby given of the current membership of the PCIE Performance Review Board.

DATES: September 4, 1990.

FOR FURTHER INFORMATION CONTACT: Individual Offices of Inspector General.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. This board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Members of the President's Council on Integrity and Efficiency Performance Review Board are:

Members	Title
Agency for International Development	
John P. Competello	Assistant Inspector General for Audit.
Gene Richardson	Assistant Inspector General for Investigations.
Department of Commerce	
Michael Zimmerman	Deputy Inspector General.
J. Steven Sadler	Deputy Assistant Inspector General for Regional Audits.
Charles M. Hall	Assistant Inspector General for Inspections and Resource Management.
Department of Defense	
Derek J. Vander Schaaf.	Deputy Inspector General.
Donald Mancuso	Assistant Inspector General for Investigations.
Nicholas T. Lutsch	Assistant Inspector General for Administration and Information Management.
Robert J. Lieberman	Assistant Inspector General for Auditing.
Morris B. Silverstein	Assistant Inspector General for Criminal Investigations Policy and Oversight.
Michael R. Hill	Assistant Inspector General for Audit Policy and Oversight.
David A. Brinkman	Assistant Inspector General for Analysis and Follow-up.
Stephen A. Whitlock	Special Assistant to the Deputy Inspector General.
Nancy L. Butler	Director, Financial, Manpower and Security Assistance Program, OAIG, AUD.
Edward R. Jones	Deputy Assistant Inspector General for Auditing, OAIG, AUD.
William F. Thomas	Director, Intelligence, Communications and Related Programs, OAIG, AUD.
Donald E. Reed	Director, Major Acquisitions Programs, OAIG, AUD.
Katherine A. Brittin	Assistant Inspector General for Inspections.

Members	Title
William G. Dupree	Deputy Assistant Inspector General for Investigations.
Donald E. Davis	Deputy Assistant Inspector General for Audit Policy and Oversight, OAIG, APO.
William T. Merriman	Director, Audit Planning and Technical Support, OAIG, AUD.
Jack L. Montgomery	Deputy Assistant Inspector General for Inspections Standards and Technical Evaluations.
David K. Steensma	Director, Contract Management Programs, OAIG, AUD.
Department of Energy	
Gordon W. Harvey	Assistant Inspector General for Audits.
Michael W. Conley	Assistant Inspector General for Inspections.
M. Thomas Abruzzo	Deputy Assistant Inspector General for Investigations.
Gregory H. Friedman	Deputy Assistant Inspector General for Audit Operations.
Stanley R. Sulak	Deputy Assistant Inspector General for Audit Policy, Plans and Programs.
Department of Health and Human Services	
Joseph E. Vengrin	Assistant Inspector General for Audit Policy and Oversight.
Robert A. Simon	Assistant Inspector General for Criminal Investigations.
Department of Housing and Urban Development	
John J. Connors	Deputy Inspector General.
John H. Greer	Assistant Inspector General for Audit.
Patrick J. Neri	Assistant Inspector General for Investigation.
Department of Interior	
Harold Bloom	Assistant Inspector General for Audits.
Thomas T. Sheehan	Assistant Inspector General for Investigations.
Department of Labor	
Gerald Peterson	Assistant Inspector General Office of Audit.
Joseph Fisch	Deputy Assistant Inspector General Office of Audit.
Gustave Schick	Assistant Inspector General Office of Labor Racketeering.
E.J. German	Assistant Inspector General Office of Resource Management and Legislative Assessment.
National Aeronautics and Space Administration	
William D. Hager	Assistant Inspector General for Investigations.
Richard J. Pelletier	Assistant Inspector General for Auditing.
Department of State	
John C. Payne	Assistant Inspector General for Audit.
Kathleen J. Charles	Assistant Inspector General for Policy, Planning, and Management.
Milton McDonald	Deputy Assistant Inspector General for Audit.
Beverly C. Lovelady	Deputy Assistant Inspector General for Security Oversight.
Department of Transportation	
Raymond J. DeCarli	Assistant Inspector General for Auditing.
H. Rae Scott	Assistant Inspector General for Investigations.
Lawrence H. Weintrob	Deputy Assistant Inspector General for Auditing.
Department of the Treasury	
Robert P. Cesca	Deputy Inspector General.
Jay M. Weinstein	Assistant Inspector General for Audit.
Gary L. Whittington	Assistant Inspector General, Policy, Planning and Resources.
Charles D. Fowler III	Assistant Inspector General for Investigations.
John N. Balakos	Assistant Inspector General for Oversight and Quality Assurance.
Department of Veterans Affairs	
Ronald P. Morani	Deputy Inspector General.
John M. Clarkson	Acting Assistant Inspector General for Investigations.
Michael G. Sullivan	Acting Assistant Inspector General for Audit.
Michael Slachta, Jr.	Deputy Assistant Inspector General for Headquarters Audits.
Jack H. Kroll	Assistant Inspector General for Policy, Planning, and Resources.
Environmental Protection Agency	
John E. Barden	Assistant Inspector General for Investigations.
Railroad Retirement Board	
William J. Doyle III	Inspector General.
Charles R. Sekerak	Assistant Inspector General for Investigations.
Small Business Administration	
Stephen N. Marica	Assistant Inspector General for Investigations.
United States Information Agency	
J. Richard Berman	Assistant Inspector General for Audit.

Dated: September 4, 1990.

James O. Rauch,

Acting Inspector General, Environmental Protection Agency, and Chairman, PCIE Committee on Internal Operations.

[FR Doc. 90-21160 Filed 9-7-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59286A; FRL 3801-1]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-90-17. The test marketing conditions are described below.

EFFECTIVE DATES: August 28, 1990.

FOR FURTHER INFORMATION CONTACT: Rick Keigwin, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 382-2440.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-90-17. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-90-17. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or

copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME-90-17

Date of receipt: July 24, 1990.
Notice of receipt: August 6, 1990 (55 FR 31882).
Applicant: Confidential.
Chemical: (G) Amine dithiocarbamate.
Use: (G) Cold water oxygen scavenger.
Production Volume: (Confidential).
Number of Customers: (Confidential).
Test marketing period: (Confidential).
Risk assessment: EPA identified concerns for developmental toxicity and neurotoxicity, based on test data on analogous chemicals; and chronic toxicity to the liver and lungs, based on test data on the TME substance. The sumbitted test data also showed that the TME substance is corrosive to the skin and eyes. Because of these corrosive properties, EPA expects that workers will wear the protective equipment specified in the Material Safety Data Sheet ("MSDS") submitted with the TME application. EPA does not expect the manufacturing, processing, and use of the TME substance to result in inhalation exposures to workers. Therefore, the corrosive nature of the TME substance, low predicted inhalation exposures, and the exposure controls specified in the MSDS mitigate EPA's concerns for human health.

EPA also identified enviornmental concerns for the TME substance based on Quantiative Structural Activity Relationships ("QSARs") derived from test data on structurally similar dithiocarbamates. EPA expects toxicity to aquatic organisms to occur at a concentration of 9 parts-per-billion (ppb) TME substance in surface waters. However, EPA expects that the amount of TME substance released to surface water will not result in surface water concentrations that exceed EPA's concern concentration.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: August 28, 1990.

Lawrence E. Culleen,

Acting Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 90-21158 Filed 9-7-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

September 4, 1990.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Tricia Gallagher, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0175.
Title: Section 73.1250, Broadcasting emergency information.
Action: Extension.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: On occasion.
Estimated Annual Burden: 155 responses; 155 hours total annual burden; 1 hour average burden per response.
Needs and Uses: Section 73.1250 requires that AM station licensees submit a report to the FCC regarding the emergency information broadcast over increased facilities. The data is used by FCC staff to evaluate the need and nature of the emergency broadcast to confirm that an actual emergency existed.

OMB Number: 3060-0313.
Title: Section 76.205, Origination cablecasts by candidates for public office.
Action: Extension.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: Recordkeeping requirements.
Estimated Annual Burden: 1,262 recordkeepers; 1,578 hours total annual burden; 1.25 hours average burden per recordkeeper.
Needs and Uses: Section 76.205 requires cable television system operators to log (political file) all requests for political broadcast time and show disposition of requests. This data is used by other candidates to know that their opponents are requesting cablecast time and/or when their opponents are cablecasting.

OMB Number: 3060-0315.
Title: Section 76.221, Sponsorship identification; list retention; related requirements.
Action: Extension.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: Recordkeeping requirement.
Estimated Annual Burden: 419 recordkeepers; 210 hours total annual burden; .5 hours average burden per recordkeeper.
Needs and Uses: Section 76.221 requires that a list of executive officers, board of directors, etc., be retained when cablecast is of a political or controversial nature; or where sponsorship announcement are waived for "want ads", a list showing name, address, telephone number of advertisers must be maintained. Data is used by public so that they may known by whom they are persuaded.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-21175 Filed 9-7-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200407.
Title: Maryland Port Administration/ Evergreen Marine Corporation (Taiwan) Ltd. Terminal Agreement.
Parties: Maryland Port Administration Evergreen Marine Corporation (Taiwan) Ltd.
Synopsis: The Agreement provides Evergreen with non-exclusive prferential berthing right at Berth No. 2 together with twenty acres of terminal area at Seagirt Marine Terminal for a term of three years. Evergreen agrees to move a minimum of 17,000 loaded containers per year through the facility in the first and second lease years and a minimum of 19,000 loaded containers in the third lease year. The Agreement provides for certain volume incentive rates per loaded container to cover charges for dockage, wharfage, crane rental and land rental.

Agreement No.: 224–200408.
Title: Maryland Port Administration/ Mediterranean Shipping Company, S.A. Terminal Agreement.
Parties: Maryland Port Administration (MPA) Mediterranean Shipping Company, S.A. (MSC).
Synopsis: The Agreement provides for: (1) MSC to lease 15 acres to receive, ship, and store containers and related cargoes at MPA's Seagirt Marine Terminal for a term of six years; (2) MSC to move a minimum of 17,000 loaded containers per year through the terminal in the first, second and third lease years and a minimum of 19,000 loaded containers in the fourth, fifth and sixth lease years; (3) MPA to provide two existing container cranes and a berth to MSC upon 24 hours' notice perior to vessel arrival; and, (4) MSC to pay $199 per loaded container or $189 per empty container in the first three years of the lease and $201 per loaded container or $189 per empty container in the fourth, fifth and sixth year of the lease.

Agreement No.: 224–004003–003.
Title: City of Long Beach/Toyota Motor Sales, U.S.A., Inc.
Parties: City of Long Beach (City), Toyota Motor Sales, U.S.C., Inc. (Toyota).
Synopsis: The Agreement amends the parties' basic agreement to: (1) Restate the agreement with regard to Toyota's use and occupancy of certain land area and Berths 82 and 83 and certain additional premises and facilities in the North Harbor Area of the Harbor District of the City of Long Beach as a contract marine automobile terminal; (2) modify the compensation payable to the City by Toyota; and, (3) reflect certain other understandings reached by the parties.

Dated: September 4, 1990.
By Order of the Federal Maritime Commission.
Dated: September 4, 1990.
Joseph C. Polking,
Secretary.
[FR Doc. 90–21124 Filed 9–7–90; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Banks or Bank Holding Companies, Fred J. Hall, et al

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than September 24, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fred J. Hall,* Brooks Hall, Jr., and Kirkland Hall, all of Oklahoma City, Oklahoma; to each acquire 33.33 percent of the voting shares of Capital National Bancshares, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire Capital National Bank, Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, September 4, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90–21135 Filed 9–7–90; 8:45 am]
BILLING CODE 6210–01–M

Acquisition of Company Engaged in Permissible Nonbanking Activities, Northern Trust Corp.

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c) (8) of the Bank Holding Company Act (12 U.S.C 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 24, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern Trust Corporation,* Chicago, Illinois; to acquire the successor to the merger of Heritage Merger Company, Chicago, Illinois, and Fiduciary Services, Inc., Houston, Texas, and thereby engage in performing functions or activities that may be performed by a trust company (including activities of a fiduciary agency or custodial nature) in the manner authorized by federal or state law pursuant to § 225.25(b)(3) of the Board's Regualtion Y. These activities will be conducted in the State of Texas.

Board of Governors of the Federal Reserve System, September 4, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90–21136 Filed 9–7–90; 8:45 am]
BILLING CODE 6210–01–M

Formation of, Acquisition by, or Merger of Bank Holding Companies; Valley Bancorp.

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than October 1, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Valley Bancorporation*, Appleton, Wisconsin; to acquire 100 percent of the voting shares of Independent Community Bancshares, Inc., Kiel, Wisconsin, and thereby indirectly acquire The Citizens State Bank, Kiel, Wisconsin.

Board of Governors of the Federal Reserve System, September 4, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-21137 Filed 9-7-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90P-0270]

Sour Cream Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Old Home Foods, Inc., to market test a product designated as "light sour cream" that deviates from the U.S. standard of identity for sour cream (21 CFR 131.160). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than December 11, 1990.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0343.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Old Home Foods, Inc., 370 University Ave., St. Paul, MN 55103.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for sour cream in 21 CFR 131.160 in that: (1) The fat content of the product is reduced from 18 percent to 9 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 2-tablespoon serving of the product contains 4 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to sour cream but contains fewer calories and less fat.

For the purpose of this permit the name of the product is "light sour cream." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "33⅓% less calories" and "50% less fat."

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 525,000 16-ounce containers and 456,000 8-ounce containers of the test product. The product will be manufactured at Old Home Foods, Inc., 370 University Ave., St. Paul, MN 55103, and distributed in Minnesota, eastern North Dakota, and western Wisconsin.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than December 11, 1990.

Dated: August 30, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-21145 Filed 9-7-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicare and Medicaid Programs, Meeting of the Advisory Council on Social Security

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public hearing.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a hearing of the Advisory Council on Social Security.

DATES: The hearing will be open to the public on September 13, 1990 from 10 a.m. to 5 p.m.

ADDRESSES: The Federal Office Building, 915 Second Avenue, room 514, Seattle, Washington 98174.

or

FOR FURTHER INFORMATION CONTACT: Olga Nelson, Administrative Officer, Advisory Council on Social Security, room 638-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington DC 20201, 202-245-0217.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every four years. The Council examines issues affecting the Social Security retirement, disability, and survivors insurance programs, as well as the Medicare and

Medicaid programs, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- The adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the current financing structure for long-term care, and the need for more stable health care financing for the aged, the disabled, the poor, and the uninsured;
- Major Old-Age, Survivors, and Disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and outgo to budget-deficit reduction efforts under the Balanced Budget and Emergency Deficit Control Act of 1985, and projected buildups in the OASDI trust funds: and
- Broad policy issues in Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of 12 members: G. Lawrence Atkins, Robert M. Ball, Philip Briggs, Lonnie R. Bristow, Theodore Cooper, John T. Dunlop, Karen Ignagni, James R. Jones, Paul O'Neill, A.L. "Pete" Singleton, John J. Sweeney, and Don C. Wegmiller. The chairperson is Deborah Steelman.

The Council is to report to the Secretary and Congress by January 1991.

II. Agenda

The Council will hear testimony on social security and health care issues.

The agenda items are subject to change as priorities dictate.

[Catalog of Federal Domestic Assistance Programs Nos. 13.714 Medical Assistance Program; 13.733 Medicare-Hospital Insurance; 13.774 Medicare-Supplementary Medical Insurance; 13.802, Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.805 Social Security-Survivor's Insurance]

Dated: August 27, 1990.

Ann D. LaBelle,

Executive Director, Advisory Council on Social Security.

[FR Doc. 90-21263 Filed 9-7-90; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Cancer Institute; Meeting—Board of Scientific Counselors, Division of Cancer Prevention and Control

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, October 18-19, 1990, Building 31C, Conference room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public on October 18 from 8:30 a.m. to recess and on October 19 from 8:30 a.m. to adjournment to discuss administrative details and for the discussion and review of concepts and programs within the Division. Attendance by the public will be limited to space available.

The Committee Management Office, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, maryland 20892-3100 (301/496-5708) will provide a summary of the meeting and a roster of committee members, upon request.

Other information pertaining to this meeting can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, Executive Plaza-North, room 318, National Institutes of Health, Bethesda, Maryland 20892 (301-496-8526), upon request.

Dated: August 30, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-21123 Filed 9-7-90; 8:45 am]

BILLING CODE 4140-01-M

Office of Human Development Services

Federal Council on the Aging; Meeting

Agency Holding the Meeting: Federal Council on the Aging.

Time and Date: Meeting begins at 9 a.m. and ends at 5 p.m. on Wednesday, September 26, 1990, begins at 9 a.m. and ends at 5 p.m., on Thursday, September 27, 1990.

Place: On Wednesday, September 26, in the SSA Conference room 648-H, Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC., from 9 a.m. to 5 p.m., and Thursday, September 27, in the SSA Conference room 684-H Hubert Humphrey Building, 200 Independence Avenue SW., Washington, DC, from 9 a.m. to 5 p.m.

Status: Meeting is open to the public. (Due to building security names of attendees should be called into FCoA office prior to meeting dates)

Contact Person: Kevin W. Parks, room 4280, Wilbur Cohen Federal Building, 619-2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93-29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92-453, 5 U.S.C. App. 1, section 10, 1976) that the Council will hold its September quarterly meeting on September 26 and 27, 1990, from 9 a.m.-5 p.m. respectively, in room 648-H, Hubert Humphrey Building, 200 Independence Avenue SW., Washington, DC, 20201.

The agenda is as follows: On September 26, the Council will conduct its regular business meeting. The agenda will include: Swearing-in of newly appointed members, discussion of Current Projects, FCoA Committee Meetings and Reports, Agenda Projects for 1990-91, the 1990 Annual Report to the President and Recommendations to be included therein, location of 1990 and 1991 meetings, in-house long range planning and deliberation on future activities and agenda for future meetings.

On September 27, from 9 a.m.-5 p.m., the Council will participate in a seminar offered by *Congressional Quarterly* entitled "Understanding Congress."

Dated: August 24, 1990.

Ingrid Azvedo,

Chairperson, Federal Council on the Aging

[FR Doc. 90-21108 Filed 9-7-90; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review

The propsal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project 1029-0092, Washington, DC 20503, telephone 202-395-7340.

Title: State-Federal Cooperative Agreement, 30 CFR part 745.

OMB number: 1029-0092.

Abstract: 30 CFR part 745 requires that States submit information when entering into a cooperative agreement with the Secretary of the Interior. OSM uses the information to make findings that the State has an approved program and will carry out the responsibilities mandated in Surface Mining Control and Reclamation Act to regulate surface coal mining and reclamation programs.

Bureau form number: None.

Frequency: On Occasion.

Description of respondents: State Regulatory Authorities.

Annual responses: 12.

Annual burden hours: 10,740.

Estimated completion time: 895 hours.

Bureau clearance officer: Andrew F. DeVito (202) 343–5150.

Dated: July 30, 1990.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 90–21140 Filed 9–7–90; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data for Use by Manalytics, Inc.

The Commission has received a request from Manalytics, Inc. for permission to use certain data from the Commissiion's 1988 and 1989 ICC Waybill Sample. The data are requested for the purpose of forecasting intermodal traffic volumes and patterns for a major (unnamed) West Coast port. Manalytics, Inc. request permission to use all fields now in the ICC Public Use Waybill File plus the origin and terminating BEA Economic Areas (BEAs are defined by the Bureau of Economic Analysis, U.S. Department of Commerce) that did not pass the 3-FSAC rule and was therefore not made part of the Public Use File.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR part 1244). From the waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party [Ex Parte No. 385 (Sub-No. 2), 52 FR 12415, April 16, 1987].

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportatioin Analysis (OTA) within 14 calendar days of the publication of this notice. They should also include all grounds for objections to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: James A. Nash, (202) 275–6864.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–21166 Filed 9–7–90; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–33 (Sub-No. 64)]

Union Pacific Railroad Co.—Abandonment—Between Bascule Bridge and Clarksburg, Yolo County, CA; Findings

The Commission has found that the public convenience and necessity permit Union Pacific Railroad Company to abandon its 9.75-mile rail line between milepost 90.5 near Bascule Bridge and milepost 6.2 near Clarksburg, in Yolo County, CA (the Holland Branch).

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase), to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than September 20, 1990. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: August 31, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–21165 Filed 9–7–90; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel Renewals; Notice

The Assistant Director for Education and Human Resources has determined that the renewal of the advisory panels listed below is necessary and in the public interest. This determination follows consultation with the General Services Administration.

Advisory Panel for Applications of Advanced Technologies.

Advisory Panel for Research in Teaching and Learning.

Advisory Panel for Instructional Materials Development.

Advisory Panel for Informal Science Education.

For further information, contact Dr. Joan Leitzel, Director, Division of Materials Development, Research and Information Science Education at 367–7452.

Dated: September 4, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–21112 Filed 9–7–90; 8:45am]

BILLING CODE 7555–01–M

Special Emphasis Panels; Meetings

Summary: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting(s) to be held at 1800 G Street NW., Washington, DC 20550 (except where otherwise indicated).

Supplementary Information: The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C.

552b(c), the Government in the Sunshine Act.

Contact Person: M. Rebecca Winkler, Committee Management Officer, room 208, 357–7363.

Dated: September 4, 1990.

M. Rebecca Winkler,

Committee Management Officer.

Committee name	Agenda	Date(s)	Times	Room*
Advisory Committee for Electrical and Communications Systems	SBIR proposals	09/18/90	8:30 a.m.–5 p.m.	1250
Advisory Committee for Biological and Critical Systems	SBIR proposals	09/27/90	8:30 a.m.–5 p.m.	1133
Advisory Committee for Electrical and Communications Systems	SBIR proposals	09/26/90	8:30 a.m.–5 p.m.	1250
Advisory Committee for Electrical and Communications Systems	SBIR proposals	09/21/90	8:30 a.m.–5 p.m.	1250

* At 1800 G Street NW., Washington, DC.

[FR Doc. 90–21113 Filed 9–7–90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–369]

Duke Power Co., (McGuire Nuclear Station, Unit 1) Exemption Regarding Schedule for Containment Integrated Leak Rate Tests

I

Duke Power Company (the licensee) is the holder of Facility Operating License No. NPF–9 which authorizes operation of the McGuire Nuclear Station, Unit 1 (the facility) at steady state reactor power levels not in excess of 3411 megawatts thermal. The facility consists of a pressurized water reactor located at the licensee's site in Mecklenburg County, North Carolina. A second pressurized water reactor located at this site is not affected by this exemption. The license provides, among other things, that it is subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Section III.D.1.(a) of appendix J to 10 CFR part 50 requires the development of a program consisting of a schedule for periodic retesting the overall integrated leakage rate of the primary reactor containment (i.e., Type A tests). This section specifies that after the preoperational leakage rate tests, a set of three Type A tests shall be performed "at approximately equal intervals" during each 10-year service period. The third test of each set is required to be conducted "when the plant is shut down for the 10-year plant inservice inspections" required by 10 CFR 50.55a.

III

By letter dated February 20, 1990, the licensee, Duke Power Company, requested a one-time exemption from the requirements of 10 CFR part 50, appendix J, section III.D.1.(a) regarding the Periodic Type A (containment integrated leak rate test) test schedule for the McGuire Nuclear Station, Unit 1. The licensee requested a one-time exemption for the scheduling of the third periodic Type A test. Appendix J requires that this test be performed during the 10-year inservice inspection (ISI) outage. The requested exemption would permit continued performance of Type A testing at the 40±10-month interval presently required by the plant Technical Specifications (TSs) with three tests required every 10 years. The proposed change would only relieve the licensee from the requirement of a Type A test during the first 10-year ISI outage. During the second 10-year service period, the licensee will be able to schedule the third Type A test to correspond with the ISI outage as required by appendix J. The licensee also submitted proposed changes to the McGuire TSs to reflect the requested exemption.

IV

Section III.D.1.(a) of appendix J to 10 CFR part 50 states that a set of three Type A tests shall be performed "at approximately equal intervals" during each 10-year service period. The third test of each set shall be conducted "when the plant is shut down for the 10-year plant inservice inspections." The McGuire TSs repeat these requirements, except that "approximately equal intervals" is replaced with a more explicit interval, 40±10 months.

The licensee submitted a proposed Type A test schedule based on a 40+10-month interval as required by the McGuire TSs. This schedule includes the tentative dates for Type A testing for the first two 10-year service periods. As scheduled, the third periodic Type A test for McGuire Unit 1 will be performed during the End-of-Cycle 6 (EOC 6) refueling outage in 1990. The following test, which would be the first test in the second 10-year service period, would be performed during the EOC 9 refueling outage in 1994. By the proposed schedule, the test interval of 40±10 months would be maintained in accordance with the TSs.

The McGuire TS requirements presently conflict with requirements for the scheduled performance for the Type A testing delineated in 10 CFR part 50, appendix J, for performing the third Type A leak rate testing during the 10-year ISI. The first 10-year ISI is scheduled to occur during the EOC 7 refueling outage. Performing the test at that time would exceed the 50-month maximum interval allowed by the TSs. Type A testing during both the EOC 6 and EOC 7 outages would be necessary if the requested exemption is not granted. Results of previous tests demonstrate that changes in overall containment leakage rates occur over the course of several years and, therefore, are unlikely to be revealed over a one-year test interval. Moreover, performance of Type A tests during two successive refueling outages, (e.g., during the EOC 6 and EOC 7 outages) would be both excessive and unnecessary.

Granting the exemption would result in nearly equal intervals between tests, keep the testing within the 40±10-month interval, and eventually result in the sixth periodic test occurring during the second 10-year ISI outage, consistent with appendix J. The Commission's staff considers the requirement that the third test occur during the 10-year ISI outage to be of minimal safety significance when compared to the actual interval between tests. The licensee's proposal maintains the appropriate interval between tests for ensuring containment leakage integrity. As further evidence of this, the staff has proposed a revision to appendix J (51 FR 39538, October 29, 1986) that would eliminate the requirement that the third Type A test per 10-year service period coincide with the 10-year ISI. The staff, therefore, finds the requested exemption and associated TS change to be acceptable.

V

The Commission has determined that pursuant to 10 CFR 50.12(a)(1) this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with

the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of the rule is to require Type A leak rate testing of the containment at periodic intervals sufficient to determine whether there has been degradation of containment leakage characteristics and to provide a basis for predicting future containment integrity. The test schedule to be implemented by the licensee under the exempted regulation is sufficient to achieve this underlying purpose in that it provides for tests at appropriate intervals.

Accordingly, the Commission hereby grants an exemption as described in section III above from section III.D.1.(a) of appendix J to 10 CFR part 50 to the effect that the Type A test on McGuire Unit 1, that would otherwise be scheduled for the 10-year ISI outage (EOC 7, 1991), is authorized to be performed instead during the Unit 1 EOC 6 outage in 1990.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will not have a significant impact on the environment (August 24, 1990, 55 FR 34782).

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 30th day of August 1990.

Gus C. Lainas,

Acting Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-21149 Filed 9-7-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Company, et al.; San Onofre Nuclear Generating Station, Unit No. 1, Notice of Consideration of Issuance of Amendment to Provisional Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-13, issued to Southern California Edison Company and San Diego Gas and Electric Company (the licensees), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego, California. The request for amendment was submitted by letter dated July 3, 1990, as supplemented by letter dated August 22, 1990.

Proposed Change No. 227, which was submitted by Amendment Application No. 185, proposes to change Technical Specification 3.4.3, "Auxiliary Feedwater System," to allow the minimum system flow requirement to be reduced from 125 gpm to 100 gpm. This change is necessary to allow the licensee to replace the auxiliary feedwater system flow venturis during the Cycle 11 refueling outage to limit the maximum auxiliary feedwater flow to each steam generator to 150 gpm for water hammer considerations. Replacing the flow venturis to limit the maximum auxiliary feedwater flow to the steam generators will also reduce the minimum auxiliary feedwater flow capability of the system.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided its analysis about the issue of no significant hazards consideration which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

Installation of smaller diameter flow reducing venturis into the three auxiliary feedwater system lines will not impact the probability or consequence of accidents previously evaluated. Calculations were made using the Westinghouse LOFTRAN code to simulate feedline break accidents. The results from these analyses show that the proposed minimum AFW flowrates are sufficient to remove core decay heat. In all cases the core remains covered with water and in a coolable geometry at all times.

The Westinghouse analyses, attachment 3, were performed on the four worst case events reported in the Updated Final Safety Analysis Report (UFSAR), section 15.6. They are 1) the feedline break upstream of the in-containment check valve (FWLB-U) at 100% power, Case D, 2) the feedline break upstream of the in-containment check valve (FWLB-U) at 50% power, Case E, 3) the feedline break downstream of the in-containment check valve (FWLB-O) at 100% power, Case F, and 4) the feedline break downstream of the in-containment check valve (FWLB-D) at 50% power, Case G.

The events discussed in UFSAR Section 15.5 were not reanalyzed since the resizing of the AFWS venturis does not affect AFW performance in these cases. They are the partial loss of normal feedwater at 100% power with an AFW flow of 165 gpm, (LONF Case A), the complete loss of normal feedwater at 100% power with an AFW flow of 185 gpm (LONF Case B), and the complete loss of normal feedwater at 50% power with an AFW flow of 185 gpm, (LONF Case C). The existing analyses are still valid in these cases since the minimun flow did not change with the modification.

The reanalysis of main feedwater line break events support SONGS 1 operation with the reduced AFW flows of 100 gpm for FWLB-U (Cases D and E) and 175 gpm for FWLB-D (Cases F and G). In all cases, the core remains covered and in coolable geometry at all times. Thus, all applicable acceptance criteria are shown to be met. The radiological consequences following a feedline break, for all cases analyzed are bounded by the radiological consequences as reported in the UFSAR, section 15.6. Therefore, the reduced AFW flows are demonstrated to be acceptable and do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Normal Technical Specification Surveillance testing will verify operability of both Trains of AFW.

Design verification testing will be performed in MODES 5 and 1 in addition to the surveillance testing required by the Technical Specifications. This additional testing of the Auxiliary Feedwater System (AFWS) will be performed to confirm that the AFWS meets the design basis requirements.

Train B pump G-10W and Train A pump G-10S will be tested in MODE 5 to determine cavitating points of the venturis. The testing will also develop sign quality pump curves.

Train B testing will confirm that pump G-10W will not exceed 450 gpm total flow to all three steam generators. This design verification testing, plus the standard construction testing will ensure Train B operates within the design basis.

Train A motor driven Pump G-10S will also be tested to verify it is capable of supplying at least 100 gpm to two intact main feedlines and depressurized steam generators.

MODE 1 is required to allow sufficient steam pressure to run the Turbine AFW pump (G-10), use automatic controls for Main Feedwater and Reactor Rod Control, and maintain stable plant conditions.

In MODE 1, testing will confirm the flowrates for the Turbine AFW pump, G-10 in combination with the motor driven AFW pump G-10S. Actual flow testing will ensure the pumps meet the minimum requirement of 100 gpm total flow to two intact main feedlines and pressurized steam generators

and the maximum of 150 gpm flow per steam generator to prevent water hammer. This testimg will provide accurate system curves for measurement of flow resistance to the steam Generators and inlet losses at a variety of pressures with accurate flow rates.

SCE calculations and Westinghouse analyses shows that acceptable AFW flow rates to the steam generators are achieved for all AFWS design basis events. This testing will verify the analyses results. It will not affect the accident probabilities since the purpose of the system is to mitigate an accident. The accident consequences will not be affected in MODE 5 since the AFW system is not required in that MODE and accidents are postulated. During Mode 1 testing, if an accident were to occur, Train B would actuate. If Train B were to fail, Train A would actuate as designed. As discussed in Attachment 4 the minimum AFW flow required at or below 25% power is well below the calculated flow of the Train A pumps G–10 and G–10S. The operation of either Train of AFW at or below 25% power will ensure that all acceptance criteria are met in the event of a feedline break or loss of normal feedwater flow.

Therefore, operating San Onofre Unit 1 in accordance with this proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Resizing the AFW flow reducing venturis to prevent the possibility of a water hammer event has been analyzed, as discussed above. After installation of the new venturis, the AFWS will function as designed.

The flow verification tests will be performed shortly after MODE 1 entry at or below 25% power. If a feed water system design basis accident were to occur before testing pump G–10, AFW Train B would actuate and provide the required AFW flow for the intact steam generators. If Train B fails, Train A AFW pumps G–10 and G–10S would be available to actuate as required. As discussed in part 1 above, the minimum AFW flow required at or below 25% power is well below the calculated flow of the Train A pumps G–10 and G–10S. Operating either Train of AFW at or below 25% power will ensure that all acceptance criteria are met in the event of a feedline break or loss of normal feedwater flow.

Therefore, it is concluded that operation of the facility in accordance with this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

As discussed above, this proposed modification will resize the AFW venturis to limit maximum AFW to 150 gpm and results in a lower flow to the steam generators in the event of a feedwater line break accident. Analyses has shown there is no significant reduction in any margin of safety, i.e., core decay heat removal is sufficient, the core remains in a coolable state, and is never uncovered.

Testing of Train A in MODE 1 below 25% power will not significantly reduce the margin of safety. In the event of a FWLB–U, AFW Train B is available. In addition, AFW Train A with pumps G–10 and G–10S is also available and capable of delivering the required flows at 25% power. Therefore, the operation of the facility in accordance with this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 10, 1990, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public ducument room located at the University of California, Main Library, P.O. Box 19557, Irvine, California 92713. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to

show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission may make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide the opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John T. Larkins: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to James A. Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 3, 1990, as supplemented by letter dated August 22, 1990, which is available for public inspection at the Commission's Public Document room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 31st day of August, 1990.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–21151 Filed 9–7–90; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology; Meeting

The President's Council of Advisors on Science and Technology will meet on September 20–21, 1990. The meeting will begin at 9:00 a.m. in the Old Executive Office Building, Washington, DC.

The purpose of the Council is to advise the President on matters involving science and technology.

Proposed Agenda

1. Briefing of the Council on the current activities of Office of Science and Technology Policy.

2. Briefing of the Council on current federal activities in science and technology.

3. Discussion of issues and topics for potential panels.

4. Discussion of composition of working groups.

The September 20–21 sessions will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussions of materials that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c) (1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

Dated: September 5, 1990.

Ms. Damar W. Hawkins,

Executive Assistant, Office of Science and Technology Policy.

[FR Doc. 90–21285 Filed 9–6–90; 2:42 pm]

BILLING CODE 3170–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Notice of Location of 1990 Public Hearings, Withdrawal of Petition and Corrections to Previous Notice

SUMMARY: This notice: (1) Announces the location of the public hearings to be held September 25–28 concerning the 1990 GSP annual review; (2) announces

the withdrawal of a petition accepted as part of this review; and (3) corrects errors in a previous notice of August 24, 1990 [55 FR 34878].

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 414, Washington, DC 20506. The telephone number is (202) 395–6971.

SUPPLEMENTAL INFORMATION:

I. Location of 1990 GSP Public Hearings

As announced in a previous notice [55 FR 34878], public hearings are scheduled to be held September 25–28 beginning at 10 a.m. These hearings will be held in Courtroom B of the United States International Trade Commission, 500 E St., SW Washington, DC 20436. Additional information on these hearings is contained in the notice cited above.

II. Withdrawal of Petition

The Government of Peru has withdrawn its petition concerning Harmonized System subheading 2922.42.10, monosodium glutamate, from consideration [case number 90–42]. This case was being reviewed during the 1990 Annual Review initiated by the Trade Policy Staff Committee in a notice of August 24, 1990 [FR 55 34878].

III. Corrections to a Previous Notice

Listed below are corrections to the notice published on August 24, 1990 [FR 55 34878] announcing the petitions being considered in the 1990 Annual Review:

(a) The second chemical listed for case 90–29 should read "o-nitrochlorobenzene".

(b) The correct spelling of the word appearing in the description for case 90–41 is "trifluoro."

(c) Footnote 6 applies to case 90–66.

(d) The last line of description for case 90–71 should read, "Other: wheel rims and spokes:spokes."

(e) The HS number for case 90–88 should read 3907.60.00. The correct description was included.

(f) The correct case number for HS 4818.40.40 is 90–91.

(g) The HS number for case 90–96 should read 8418.21.00. The correct description was included.

David A. Weiss,

Chairman, Trade Policy Staff Committee.

[FR Doc. 90–21181 Filed 9–7–90; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–28407; File No. 4–281]

Joint Industry Plan; Filing and Immediate Effectiveness of Amendments to the Consolidated Tape Association Plan and to the Consolidated Quotation Plan

The participants in the Consolidated Tape Association ("CTA") plan and Consolidated Quotation ("CQ") plan on August 21, 1990, submitted amendments to the restated CTA and CQ plans created pursuant to Rule 11Aa3–1(b)(2) and Rule 11Aa3–2(b) under the Securities Exchange Act of 1934 ("Act").[1] In the view of the participants, the amendments involve solely technical and ministerial matters rendering them effective upon the Commission's receipt of the filing pursuant to paragraph (c)(3)(iii) of Rule 11Aa3–2.

The purpose of the amendments is to revise the form of vendor/computer input user agreement, ("Consolidated Form"), which the participants originally filed with the Commission on October 12, 1989, to incorporate certain changes recommended by commentators to the participants' original filing of the Consolidated Form.[2] The changes to the original form are summarized as follows:

(a) *Derivative Data*—The definitions of Delayed Last Sale Information, Last Sale Information and Quotation Information have been amended to remove references to derivative data.

(b) *Access to Vendor and Subscriber Premises*—The participants have deleted a provision that extended their inspection rights to the premises of subscribers receiving types of market data other than types that the participants make available. The provision now allows the participants to inspect only such subscriber premises as receive the participants' market data.

(c) *Reimbursement of Professional Subscriber Fees*—The original Consolidated Form required vendors to reimburse the participants at professional subscriber rates if it is determined that a person receiving data as a nonprofessional is actually a professional. That paragraph has been amended to provide that the vendor need only reimburse the participants if it fails to demonstrate that it has made a good faith effort in determining whether a person is a nonprofessional subscriber.

(d) *Joint and Several Liability*—The original Consolidated Form obligated the participants to defend and indemnify the vendor against certain customer suits and proceedings that third parties may bring against the vendor. Those indemnities have now been amended to make them joint and several.

II. Request for Comment

As stated above, the participants in the restated CTA and CQ plans originally filed the Consolidated Form in October of 1989. The Commission received comment letters from eleven commentators which were principally concerned that the CTA and CQ had determined to impose new and additional charges for delayed data or to extend the delay period. The commentators expressed concern that the original Consolidated Form gave the NYSE the right to raise fees on delayed data and to extend the delay period, and restrict the use the vendors made of the market data purchased from CTA and CQ. In a letter responding to the commentators, the CTA and CQ stated that they recognized that, in order to raise the fees charged for delays data or extend the delay period, they would be required to submit a filing with the Commission for its review and approval.[3] The CTA and CQ did, however, amend the original Consolidated Form to incorporate certain other changes recommended by commentators to the participants which is the subject to this filing.

As stated above, in the view of the participants, the amendments involve solely technical and ministerial matters rendering them effective upon the Commission's receipt of the filing pursuant to paragraph (c)(3)(iii) of Rule 11Aa3–2. The Commission may summarily abrogate the amendments within 60 days of its filing and require refiling and approval of the amendments by Commission order pursuant to Rule 11Aa3–2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and comments on the amendments. Persons submitting comments should file six copies with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC

[1] The participants in the restated CTA and CQ plans are the American Stock Exchange ("Amex"), Boston Stock Exchange, Cincinnati Stock Exchange, Midwest Stock Exchange, National Association of Securities Dealers, New York Stock Exchange ("NYSE"), Pacific Stock Exchange, and Philadelphia Stock Exchange.

[2] *See*, Securities Exchange Act Release Nos. 27498 (December 4, 1989), 54 FR 50628; nd 27497 (December 4, 1989), 54 FR 51093.

[3] *See* letter from Thomas E. Haley, Chairman, Consolidated Tape Association, Consolidated Quotation Plan Operating Committee, to Brandon Becker, Associate Director, SEC, dated May 4, 1990.

20549. Copies of the submissions and related items, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. All communications should refer to File No. 4–281 and should be submitted by October 2, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(27).

Dated: September 6, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–21312 Filed 9–7–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17721; 811–1903]

First Investors Discovery Fund, Inc.; Application

August 30, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: First Investors Discovery Fund, Inc.

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on June 20, 1990.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 1, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 120 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282, (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant, a Maryland corporation, registered as an open-end diversified management investment company under the 1940 Act on July 24, 1969. Its registration statement under the Securities Act of 1933 was made effective September 24, 1969.

2. On March 23, 1989, the Boards of Directors of Applicant and First Investors Global Fund, Inc. ("Global Fund") determined that a reorganization could provide shareholders of both Applicant and Global Fund better long-term investment performance and less risk exposure over a broader range of market conditions. They unanimously adopted resolutions approving the reorganization of the two Funds and the submission of an Agreement and Plan of Reorganization for approval by Applicant's shareholders.

3. On September 22, 1989, a majority of Applicant's shareholders approved the Agreement and Plan of Reorganization. Subsequently, on December 27, 1989, Applicant transferred all of its assets (amounting to $17,402,480.66, or $9.89 per share, as of December 26, 1989) to Global Fund in a tax-free exchange for shares of Global Fund having the same aggregate net asset value. On the same date, Applicant distributed the Global Fund shares acquired through the transfer to its shareholders on a pro rata basis in exchange for, and in cancellation of, the outstanding shares of Applicant.

4. As a result of the reorganization of Applicant and Global Fund, Global Fund shares were substituted for shares of Applicant held of record by First Investors Single Payment and Periodic Payment Plans I for Investment in First Investors Global Fund, Inc. (formerly First Investors Single Payment and Periodic Payment Plans for Investment in First Investors Discovery Fund, Inc.), a unit investment trust registered under the 1940 Act. The Applicant, Global Fund, and certain other persons had previously filed an application for an exemption to permit, among other things, the substitution of shares of Global Fund for shares of the Applicant under the Plan. The SEC issued an order granting the application on December 26, 1989 (Investment Company Act Rel. No. 17283).

5. Expenses incurred in connection with the reorganization were borne by Applicant and Global Fund based on the relative net asset value of the two funds, except for expenses that were specifically allocated to either Fund. The Applicant assumed all proxy solicitation expenses incurred in connection with the Special Meeting of Shareholders of Applicant to consider approval of the reorganization.

6. The Applicant does not currently propose to engage in any business activities other than those related to its dissolution. It has no securityholders or assets, no debts or other liabilities, and it is not a party to any litigation or administrative proceeding. Upon receipt of an order from the SEC granting the application, Applicant intends to file a Certificate of Dissolution with the appropriate authority in the State of Maryland.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–21120 Filed 9–7–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17720; 811–1347]

First Investors Fund for Growth, Inc.; Notice of Application

August 30, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: First Investors Fund for Growth, Inc.

Relevant 1940 Act Section: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on June 20, 1990.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 1, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service.

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 120 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, a Maryland corporation, registered as an open-end diversified management investment company under the 1940 Act of December 10, 1965. Its registration statement under the Securities Act of 1933 was made effective April 7, 1966.

2. On March 23, 1989, the Boards of Directors of Applicant and First Investors Global Fund, Inc. ("Global Fund") determined that a reorganization could provide shareholders of both Applicant and Global fund better long-term investment performance and less risk exposure over a broader range of market conditions. They unanimously adopted resolutions approving the reorganization of the two Funds and the submission of an Agreement and Plan of Reorganization for approval by Applicant's shareholders.

3. On December 27, 1989, pursuant to the Agreement and Plan of Reorganization by and between Applicant and Global Fund, which was approved by a majority vote of Applicant's shareholders, Applicant transferred all of its assets (amounting to $31,329,843.44, or $6.78 per share, as of December 26, 1989) to Global Fund in a tax-free exchange for shares of Global Fund having the same aggregate net asset value. On the same date, Applicant distributed the Global Fund shares acquired through the transfer to its shareholders on a pro rata basis in exchange for, and in cancellation of, the outstanding shares of Applicant.

4. As a result of the reorganization, Global Fund shares were substituted for shares of Applicant held of record by First Investors Single Payment and Periodic Payment Plans II for Investment in First Investors Global Fund, Inc. (formerly First Investors Single Payment and Periodic Payment Plans for Investment in First Investors Global Fund, Inc.), a unit investment trust registered under the 1940 Act. The Applicant, Global Fund, and certain other persons had previously filed an application for an exemption to permit, among other things, the subsitution of shares of Global Fund for shares of the Applicant under the Plan. The SEC issued an order granting the application on December 26, 1989 (Investment Company Act Rel. No. 17284).

5. Expenses incurred in connection with the reorganization were borne by Applicant and Global Fund based on the relative net asset value of the two Funds, except for expenses that were specifically allocated to either Fund. The Applicant assumed all proxy solicitation expenses incurred in connection with the Special Meeting of Shareholders of Applicant to consider approval of the reorganization.

6. The Applicant does not currently propose to engage in any business activities other than those related to its dissolution. It has no securityholders or assets, no debts or other liabilities, and it is not a party to any litigation or administrative proceeding. Upon receipt of an order from the SEC granting the application, Applicant intends to file a Certificate of Dissolution with the appropriate authority in the State of Maryland.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–21121 Filed 9–7–90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35–25141]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 31, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 24, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of any attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

General Public Utilities Corporation (70–3816)

General Public Utilities Corporation ("GPU"), 100 Interspace Parkway, Parsippany, New Jersey 07054, a registered holding company, and its wholly owned, electric public-utility subsidiary companies, Jersey Central Power and Light ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, Metropolitan Edison Company ('MetEd"), P.O. Box 16001, Reading, Pennsylvania 19740 and Pennsylvania Electric Company ("Pennelec"), 1001 Broad Stret, Johnstown, Pennsylvania 15907, (collectively, "Utility Subsidiaries"), have filed a post-effective amendment to their declaration pursuant to section 12(b) of the Act and Rule 45 thereunder.

By order dated May 3, 1988 (HCAR No. 24636), the Commission authorized the Utility Subsidiaries to make capital contributions to their wholly owned subsidiary company, Saxon Nuclear Experimental Corporation ("SNEC"), through December 31, 1989 such that the aggregate contributions theretofore and to be made would not exceed $13 million. To date, the Utility Companies have made capital contributions to SNEC aggregating approximately $11.3 million.

The Utility Subsidiaries now propose to extend authorization for the remaining cash capital contributions in the amount of $1.7 million to SNEC through December 31, 1991, in the proportions of JCP&L—44%, MetEd—32% and Pennelec—24%, in amounts such that the aggregate capital contributions by the Utility Subsidiaries to SNEC theretofore and to be made do not exceed $13 million.

Central and South West Corporation (70–7767)

Central and South West Corporation ("CSW"), 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75202, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and Rules 42, 45 and 50(a)(5) thereunder.

CSW proposes to amend the Central and South West Corporation Employees' Thrift Plan ("Thrift Plan") to include a leveraged employee stock ownership plan ("LESOP") feature and create a trust ("LESOP Trust") by either amending the trust agreement relating to the Thrift Plan to reflect the adoption of the LESOP, or by creating a separate trust under the Thrift Plan as the funding medium for the LESOP. The LESOP will be used to finance the purchase by the LESOP Trust of CSW common stock under the Thrift Plan.

Under the Thrift Plan, participants ("Participants") may currently invest up to 10% of their annual salary, with CSW matching Participants' contributions up to 6% of a Particpant's annual compensation. Participants' contributions up to 6% and CSW's matching contributions may be invested in either the Company Stock Option ("Stock Option"), which provides for the purchase of CSW's common stock, or the Guaranteed Fixed Income Option ("Fixed Income Option"), which provides for the purchase of guaranteed insurance company contracts; Participants' contributions above 6% must be invested in the Fixed Income Option. The Thrift Plan, as amended, would increase the amount each Participant may contribute to the Thrift Plan from 10% to 12% of the Participant's annual compensation, with a matching contribution from CSW of up to 6% of a Participant's annual compensation.

CSW currently funds its matching obligation by transferring cash, on a monthly basis, to the Thrift Plan trustee ("Trustee"). Under the Stock Option, the Trustee presently uses the cash received from Participants' investments and from CSW's matching contributions to purchase CSW common stock in the open market at prevailing market prices. As now proposed, the LESOP Trust will borrow from either CSW or an institutional lender ("Institutional Lender"), or both, through December 31, 1991, an aggregate principal amount not exceeding $500 million for a term not exceeding 30 years, in order to pre-fund for 30 years CSW's obligation to match contributions by Participants to the Thrift Plan.

The Trustee will use the proceeds derived from the LESOP Trust's borrowings to purchase: (1) Existing shares of CSW common stock in the open market' (2) existing shares of CSW common stock directly from CSW that CSW repurchases in the open market; (3) subject to the future approval of the Commission, authorized but unissued shares of CSW common stock directly from CSW; or (4) a combination of the foregoing, but in any case, at a price not exceeding the fair market value of the CSW shares of common stock at the time of purchase. At current market prices, the maximum loan of $500 million would enable the LESOP Trust to purchase approximately 12.5 million, shares, or 13%, of the total shares of CSW common stock outstanding.

The LESOP Trust will finance the acquisition of CSW common stock through the issuance of debt, either to CSW or to institutional lenders, through December 31, 1991, in a principal amount not to exceed $500 million, maturing in 30 years. Funds borrowed by the LESOP Trust from CSW or an Institutional Lender will be evidenced by the issuance of notes bearing interest at a rate of approximately 9.5%. CSW proposes to guarantee borrowings by the LESOP Trust from Institutional Lenders.

In the event that CSW loans funds to the LESOP Trust, CSW may engage in long-term borrowings for up to 30 years, at an anticipated rate of interest of 10% to 11%, through: (1) The issuance and sale of commercial paper in the form of unsecured notes with varying maturities of not more than nine months, to commercial paper dealers; or (2) the issuance of medium term notes with maturity of from 9 months to 30 years; or (3) notes to institutional lenders under a credit facility with a duration of from one to 30 years.

The LESOP Trust will use cash dividends paid on the CSW shares acquired with the proceeds of the loans from CSW or from Institutional Lenders to repay the principal and interest on these loans. To the extent that such cash dividends are insufficient to service the LESOP Trust debt, CSW would make periodic cash contributions to the LESOP Trust in an amount which, together with the cash dividends, would be sufficient to meet the LESOP's debt principal and interest payments.

Public Service Company of Oklahoma (70–7797)

Public Service Company of Oklahoma ("PSO"), P.O. Box 201, Tulsa, Oklahoma 74102, a wholly-owned electric public-utility subsidiary company of Central and South West Corporation ("CSW"), a registered holding company, has filed a declaration pursuant to section 12(d) of the Act and Rule 44 thereunder.

PSO proposes to sell to its industrial customer, Conoco, Inc. ("Conoco"), certain transformation facilities located on Conoco's premises near Tuttle, Oklahoma, for a cash purchase price of $216,558.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–21168 Filed 9–7–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17718; 811–4886]

Quest For Value Cash Management Trust; Application for Deregistration

August 30, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

Applicant: Quest For Value Cash Management Trust.

Relevant Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application on Form N–8F was filed on June 26, 1990, and an amendment thereto was filed on August 15, 1990.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 25, 1990 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Quest For Value Advisors, Oppenheimer Tower, 200 Liberty Street, New York, NY 10281.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Staff Attorney, (202) 272–3035, or Max Berueffy, Branch Chief, (202) 272–3016 (Division of

Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is an open-end, diversified management investment company organized as a Massachusetts business trust.

2. On October 23, 1986, Applicant filed a registration statement on Form N–1A to register an indefinite number of its shares of beneficial interest. On January 14, 1987, that registration statement became effective, and Applicant commenced its initial public offering.

3. In November 1989, Oppenheimer & Company, Inc. notified its clients that the money market component of its "sweep" account would be consolidated with Quest Cash Reserves, Inc., a money market fund managed by Quest For Value Advisors. Thereafter, all of Applicant's shareholders (other than Oppenheimer Capital, the parent of Quest For Value Advisors) either redeemed their shares or exchanged their shares for shares of Quest Cash Reserves, Inc. Oppenheimer Capital is Applicant's sole remaining shareholder.

4. The liquidation of Applicant was authorized by Applicant's board of trustees on April 16, 1990, and was approved by its sole remaining shareholder.

5. As of June 15, 1990, Applicant had 118,790 shares of beneficial interest outstanding, with a net asset value of $118,790. As of that date, Applicant had accrued expenses of $30,139.39 and dividends payable of $110.00, which will be paid from Applicant's remaining cash and from the assets held by Oppenheimer Capital. After paying all its remaining expenses, Applicant will distribute any remaining cash to Oppenheimer Capital in exchange for retirement of its shares.

6. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant.

7. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged, and does not propose to engage, in any business activity other than that needed to windup its affairs.

9. If the Commission grants Applicant an order under section 8(f), Applicant will file a notice in the Commonwealth of Massachusetts regarding termination of the trust.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–21122 Filed 9–7–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17722; 812–7559]

Societe Generale; Application

August 31, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940").

APPLICANT: Societe Generale ("Applicant").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act conditionally granting an exemption from all provisions of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order to permit it to issue and selll in the United States any type of its equity securities, either directly or in the form of American Depository Shares represented by American Depository Receipts.

FILING DATE: The application was filed on July 11, 1990, and amended on August 29, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 24, 1990, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Michael Gruson, Esq., Shearman & Sterling, 599 Lexington Avenue, New York, New York 10022, or William Lee, Esq., Shearman & Sterling, 12 rue d'Astorg, 75008 Paris, France.

FOR FURTHER INFORMATION CONTACT: Robert A. Robertson, Staff Attorney, at (202) 504–2283, or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier (800) 231–3282 (in Maryland (303) 258–4300).

Applicant's Representations

1. Applicant represents that it is the fourth largest commercial bank in France and the leading private bank, in terms of total assets. Applicant's main business, like that of major United States banks, is receiving deposits and making loans. In addition, Applicant engages in other banking and bank-related activities, including foreign exchange transactions, foreign currency lending, international trade finance, consumer credit, data processing services and securities operations. At December 31, 1989, Applicant had total assets of $175.8 billion. Consolidated customer deposits and consolidated customer loans amounted to $62.6 billion and $82.1 billion, respectively. Consolidated net worth (after appropriations) at December 31, 1989 was $5.4 billion and consolidated net income at December 31, 1989 was $686.6 million.[1]

2. Applicant is subject to extensive government regulation as a bank in France under a structure that generally is comparable to regulation applicable to banks and bank holding companies in the United States and most European countries. Rules and regulations governing the operation of French banks and other credit institutions range from licensing requirements and restrictions on the scope of non-banking activities to detailed balance sheet ratios and regular reporting and reserve requirements.

3. Applicant has a substantial banking presence in the United States through its state-licensed branches located in New York, Chicago and Los Angeles, its state agency located in Houston, and its representative offices in Dallas and San Francisco. Applicant's United States branches and agencies are principally engaged in wholesale commercial lending. These branches operate under licenses from banking authorities of the State in which they are located and are subject to State supervision and

[1] Amounts stated in United States dollars ($) have been converted from French Francs (FF) at the rate of exchange of $1 = 5.788 FF, the Fixing Rate for the United States dollar on the Paris Stock Exchange on December 29, 1989.

regulation substantially equivalent to those applicable to banks organized under the banking laws of New York. In addition, Applicant is subject to federal reporting requirements, and the United States branches, offices and agencies of Applicant are subject to reporting and examination requirements under the International Banking Act of 1978, which are similar to those imposed on domestic banks that are members of the Federal Reserve System.

4. Applicant wishes to be able to have access to the United States capital markets through private placements or public offerings of its equity securities, either directly or in the form of American Depository Shares rerpesented by American Depository Receipts.

Applicant's Legal Analysis

1. Section 6[c] of the 1940 Act authorizes the SEC to issue conditional or unconditional exemptions from any provisions of the 1940 Act or rule thereunder if the exemption is "necessary or appropriate in the public interest" and is "consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the 1940 Act]."

2. On August 15, 1990, the SEC approved for comment amendments to Rule 6c–9 under the 1940 Act. Investment Company Act Release No. 17682 (Aug. 17, 1990). The amendments would, among other things: (a) Extend the Rule's exemption from registration under the 1940 Act to foreign banks and their finance subsidiaries offering or selling their equity securities, and certain foreign bank holding companies offering or selling their securities, and (b) make certain other changes to Rule 6c–9 and to Form N–6C9, the form for appointment of a United States agent for service of process by entities relying on Rule 6c–9. The SEC also is considering an interpretive position that United States branches and agencies of foreign banks, for the limited purpose of issuing securities in the United States, will be considered banks under the 1940 Act and exempted from registration as investment companies. Investment Company Act Release No. 17681 (Aug. 17, 1990).

3. Applicant asserts that it comes within the scope of the proposed amendments to Rule 6c–9. Moreover, it believes the requested order is necessary and appropriate in the public interest. Applicant believes that providing it with the opportunity to have greater access to the United States capital markets would advance the policies underlying the International Banking Act of 1978, which include placing United States banks and foreign banks on a basis of competitive equality in their United States transactions. Applicant also believes that the requested relief is consistent with the protection of investors. Applicant is subject to a comprehensive scheme of regulation in both France and the United States,and Applicant believes that the imposition of another scheme of regulation would impose inhibitions and expense without contributing to the protection of investors.

Applicant's Condition

As a condition to the requested relief, Societe Generale will comply with the proposed amendments to Rule 6c–9 under the 1940 Act as they are currently proposed, and as they may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, and under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–21167 Filed 9–7–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–90–37]

Petitions for Exemption, Summary of Petitions Received; Disposition of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 30, 1990.

ADDRESSES: Send comments on any petition in triplicate to Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 4, 1990.

Deborah E. Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25080.
Petitioner: Aeroservice Aviation Center, Inc.
Sections of the FAR Affected: 14 CFR 61.63(d)(2) and (d)(3); 61.157(d)(1), (d)(2), (e)(1), and (e)(2); part 61, appendix A; and part 121, appendix H.
Description of Relief Sought: To extend Exemption No. 4745A, which allows petitioner, and persons who contract with petitioner, to use FAA-approved simulators to meet certain training and testing requirements. Exemption No. 4745A will expire on January 31, 1991.

Docket No.: 26225.
Petitioner: Dale Aviation/Winthrop G. Dale.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow petitioner, as the owner/pilot, to remove and replace passenger seats in a Cessna 310 Q airplane used in operation under part 135.

Dispositions of Petitions

Docket No.: 25024.
Petitioner: University of Illinois Institute of Aviation.
Sections of the FAR Affected: 14 CFR part 1141, appendixes A, C, D, F, and H.
Description of Relief Sought/Disposition: To extend Exemption No. 4719, which allows the petitioner to train its students to a performance standard in lieu of meeting minimum flight time requirements.

Grant, August 30, 1990, Exemption No. 4719B

Docket No.: 25177.
Petitioner: U.S. Coast Guard.
Sections of the FAR Affected: 14 CFR 91.65(b), 91.70 (b) and (c), 91.73 (a) and (d), 91.79(c), 91.85(b), and 91.109(a) [new 91.111(b), 91.117 (b) and (c), 91.209 (a) and (d), 91.119(c), 91.127(b), and 91.159(a)].
Description of Relief Sought/ Disposition: To extend Exemption No. 4780 that allows the petitioner to facilitate interdiction of illegal drug trafficking by allowing operation of an aircraft so close to another aircraft so as to create a collision hazard, operation of an aircraft in formation flight without prior arrangement with the pilot in command of the other aircraft in the formation, or operation of an aircraft within an airport traffic area at other than required altitude, airspeeds, etc.

Partial Grant, August 29, 1990, Exemption No. 5231

Docket No.: 26101
Petitioner: America West Airlines, Inc.
Sections of the FAR Affected: 14 CFR 93.123(a).
Description of Relief Sought/ Disposition: To extend Exemption No. 5133, which authorizes petitioner to operate four flights at Washington National Airport above the hourly limits for scheduled air carriers specified in the High Density Rule.

Grant, July 13, 1990, Exemption No. 5133A

Docket No.: 26254.
Petitioner: Fokker Aircraft U.S.A., Inc.
Sections of the FAR Affected: 14 CFR 121.312.
Description of Relief Sought/ Disposition: To allow additional time for compliance with the upgraded fire safety standards for cabin interior materials in transport-category airplanes. The compliance date would be extended from August 20, 1990, to September 13, 1990, for Fokker Aircraft serial number 11312.

Grant, August 2, 1990, Exemption No. 5226

Docket No.: 086CE.
Petitioner: Beech Aircraft Corporation.
Sections of the FAR Affected: 14 CFR 23.201(e), (f)(4), and (f)(5); 23.203(c)(4) and (c)(5); and 23.1545(b)(5) and (b)(6).
Description of Relief Sought/ Disposition: To permit type certification of the Beech Model 1900D airplane with certain stall characteristics and airspeed indicator markings that are appropriate to this category of aircraft.

Grant, August 9, 1990, Exemption No. 5216

[FR Doc. 90–21129 Filed 9–7–90; 8:45 am]
BILLING CODE 4910–13–M

Certification Issues Conference; Normal Category Powered-Lift Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of conference.

SUMMARY: The Rotorcraft Directorate is sponsoring a conference to discuss civil certification issues and draft interim airworthiness criteria for normal category powered-lift aircraft. Powered-lift aircraft include characteristics of both rotorcraft and small airplanes and, as a result, will consitiute a unique category for airworthiness certification. Since existing airworthiness standards do not address these aircraft, the FAA is developing criteria for airworthiness certification. This conference will allow the public an opportunity to participate in developing certification criteria and identifying certification-related issues.

DATES: The conference will start at 9 a.m. on October 23 and 24, 1990. Registration will begin at 8 a.m. on October 23.

ADDRESSES: The conference will be held at the Holiday Inn North/Conference Center, 2540 Meacham Blvd., Fort Worth, Texas; telephone (817) 625–9911.

Agenda items should be submitted to the FAA, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, on or before September 28, 1990.

FOR FURTHER INFORMATION CONTACT: Mrs. Debra Myers, FAA, Rotorcraft Standards Staff, Forth Worth, Texas 76193–0110; telephone (817) 624–5118 or fax (817) 624–5988. For information on technical issues, contact Mr. Jim Honaker, FAA, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110; telephone (817) 624–5109 or fax (817) 624–5988.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1989, the FAA published in the **Federal Register** (54 FR 13131) a request for comments on factors to be considered in establishing the applicability of airworthiness criteria for normal category powered-lift aircraft. The factors are: (1) Nine or less passenger seats; (2) 20,000 lb. maximum gross weight; and (3) performance requirements to permit certification of single-engine aircraft and with one-engine-inoperative climb capability required of some multiengine aircraft. In general, all commenters supported these factors, which have been used in the development of the draft airworthiness criteria.

One of the major difficulties in determining the requirements for a powered-lift aircraft has been in defining "powered-lift" so that it will include any probable configuration and capability but at the same time will not encroach upon the existing standards for conventional airplanes or rotorcraft. It has been suggested that new standards are not needed and that present rotorcraft or airplane standards, with a few special conditions, would be adequate for powered-lift concepts that appear most likely to be developed. Nevertheless, the FAA considers these concepts sufficiently unique to require new criteria; however, in areas of design where the specifics of powered-lift concepts are sufficiently similar to airplane or rotorcraft standards, it is believed that it would be appropriate to use established standards that are the result of aerospace industry and FAA experience.

During the conference, four technical issues panels will be formed (flight, systems, propulsion, and airframe), each chaired by a Rotorcraft Directorate representative. Each panel will include worldwide operators, manufacturers, civil aviation authorities, and aviation experts. The goal of the panels will be to review the draft criteria, including written comments received, and complete a revision of the criteria by late 1991. The document will then be available for applicants to use as a certifiation guide. Ultimately, after certification experience is accumulated with these criteria, it is anticipated that they could become a new part of the Federal Aviation Regulations (FAR).

A tentative agenda includes discussion of the background of the normal category criteria, presentations by industry, and breakout meetings of the technical issues panels. Interested persons are invited to identify any additional agenda items and submit the items by September 28, 1990.

Conference Procedures

The following procedures will be used to facilitate the workings of the conference.

1. Registration will be from 8 to 9 a.m. on October 23, 1990.

2. Conference sessions will be open to all persons who register.

3. Conference preregistration is recommended. You may preregister by contacting Mrs. Debra Myers at the above address.

4. The FAA will consider all material presented at the conference by

participants. Handout materials may be accepted at the discretion of the chairperson; however, enough copies should be provided for distribution to all conference participants.

5. Statements made by the FAA will be made to facilitate discussion and should not be taken as expressing a final FAA position.

6. Although the opening and closing sessions will be recorded by a court reporter, and transcripts will be available, comments will have to be submitted in writing to the FAA to be considered in revising the criteria. Comments must be submitted no later than March 1, 1991.

7. The Holiday Inn North/Conference Center has blocked rooms for conference participants at a rate of $45 per night. When making reservations, identify yourself as an FAA/powered-lift conference participant.

Issued in Forth Worth, Texas, on August 16, 1990.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-21130 Filed 9-7-90; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Pierce County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Pierce County, Washington.

FOR FURTHER INFORMATION CONTACT: Jan Brown, District Engineer, Federal Highway Administration, 711 South Capitol Way, suite 501, Olympia, WA 98501, Telephone: (206) 753-9555. Art Smelser, District Administrator, District 3, Washington State Department of Transportation, P.O. Box 9327, Olympia, WA 98504, Telephone: (206) 357-2605.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to conduct a corridor location study for State Route (SR) 167 in Pierce County, Washington. The proposed action would identify a preferred location for a freeway from the existing southern terminus of the SR 167 freeway at Meridian Street in the City of Puyallup, Washington to Interstate 5 in or near the City of Fife, Washington, a distance of up to five miles.

A freeway built in the corridor recommended by the project would complete a freeway system planned over 30 years ago and would improve commercial access between the Port of Tacoma and the warehousing and distribution centers of the SR 167 corridor (Puyallup to Renton). The project scoping process will identify three corridors for new freeway alignments in addition to a no action alternative. Corridors to be considered in the scoping process include corridors described in a 1968 corridor design report and a 1976 corridor study.

Letters describing the proposed action and soliciting comments will be sent to Indian Tribes, Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in Puyallup and Fife in the second half of 1990. A public corridor hearing will be held in 1991 to present corridor alternatives to the community for comment and endorsement before a commitment is made to any one project route or location. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. An agency scoping meeting, in addition to the public meetings held during the scoping process, is planned.

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: August 30, 1990.

Richard Schimelfenyg,

Area Engineer, Olympia, Washington.

[FR Doc. 90-21177 Filed 9-7-90; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for waivers of compliance with certain requirements of the federal safety laws and regulations. The individual petitions are described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Duluth, Winnipeg and Pacific Railway

Waiver Petition Docket Numbers PB-90-3 and SA-90-8

The Duluth, Winnipeg and Pacific Railway (DWP) requests waivers of compliance with certain provisions of the Railroad Power Brakes and Drawbars Regulations (49 CFR part 232), under Docket No. PB-90-3, and the Safety Appliance Regulations (49 CFR part 231), under Docket No. SA-90-8.

The DWP seeks these waivers of compliance to permit the operation of railroad/highway vehicles which are designated as "RoadRailer" units. The petitioner stated that the Burlington Northern Railroad (BN) applied for a waiver to operate Mark V RoadRailers between St. Paul, Minnesota and International Falls, Minnesota (see 55 FR 15094, April 20, 1990). Since the submission of the BN's petition, the DWP has negotiated operations of the RoadRailer over a portion of the route described in the BN waiver request between Pokegama Yard, Superior, Wisconsin and International Falls, Minnesota, a distance of approximately 170 miles.

At the present time, a combined total of approximately 2,000 Mark IV and Mark V RoadRailer units are being operated by the Norfolk Southern (NS) Corporation under a temporary conditional waiver (Docket Numbers SA-87-2 and PB-87-4) issued by FRA on July 28, 1987. These vehicles are almost identical in configuration to the standard semi-trailer presently used to haul cargo over the highway. The Mark IV RoadRailers are equipped with a special drawbar, railroad running wheels mounted on a single axle located between the tandem semi-trailer wheels, and a special railroad air brake system. The Mark V RoadRailers are similar in most respects to the Mark IVs, except that they are supported and transported on a 70-ton standard freight car truck, each truck being equipped with an ABDW air brake system, instead of a self contained wheel/axle set. The RoadRailer vehicles, by design, cannot be subjected to traditional switching procedures conducted in railroad classification yards. The coupler assembly will only couple to another

RoadRailer or to a specially designed adapter car between the locomotive and a RoadRailer train.

The temporary conditional waiver granted to the NS permits noncompliance with all the provisions of the Safety Appliance Standards (49 CFR part 231). These standards include provisions that provide the number, location and dimensional specifications for the handholds, ladders and sill steps that are required for each railroad car. The RoadRailers are not in compliance with the drawbar standard height above the top of the rail, 49 CFR § 232.2; the standard height is 34½ inches to 31½ inches measured from the center of the coupler to the top of the rail. The RoadRailer coupler is 49 inches above the top of the rail in order to accommodate the height of the semi-trailer fifth-wheel assembly.

Therefore, the DWP requests a waiver of compliance with the applicable Code of Federal Regulations to permit stand-alone operation of the RoadRailers subject to the following conditions:

1. Initial operation would be between Pokegama Yard, Superior, Wisconsin and International Falls, Minnesota.
2. Train to consist of a maximum of 75 RoadRailer chassis, one adaptor car and required locomotives.
3. Trains would be proposed to operate on a five or six days per week, but eventually to a seven day operations.
4. Initial maintenance of the RoadRailer equipment would be done by qualified contract personnel.
5. Necessary training of DWP personnel involved in inspection, assembly, disassembly and movement of the RoadRailer will be given prior to operation of the RoadRailer trains.

If in the future, the traffic or market warranted additional cars or trains, the FRA will be given advanced notice of any additional requests or applications for expansion authority.

Long Island Rail Road

Waiver Petition Docket Number PB–89–5

The Long Island Railroad (LI) and Intermodal Concepts, Inc. (ICI) are requesting a change in their operation of ICI bogies between Brooklyn, New York and Farmingdale, New York a distance of about 30 miles. At the present time, the ICI bogies are operated under a conditional waiver, Docket No. PB–89–5, approved by the FRA on February 9, 1990. The original petition was submitted by the LI, and was also made on behalf of the Cross Harbor Railroad Terminal Corporation (NYCH) and ICI (see 53 FR 10851, Friday, April 1, 1988).

The conditional approval granted to the LI contained the following condition:

That the bogies may not be commingled with conventional equipment. (Note: For the purpose of this waiver, "commingled" means that the bogies may only be operated in trains consisting of locomotive(s) and bogies).

The LI petition requests a modification of the condition prohibiting commingling of bogies in freight trains. The railroad proposes to move up to fifteen ICI bogies behind a regular freight train, not to exceed fifteen freight cars, between Brooklyn and Farmingdale.

It is the LI's intent to commingle the equipment on the freight only portion of its Bayridge Branch for at least a month before entering the passenger train main track.

The Depew, Lancaster and Western Railroad Co., Inc.

Waiver Petition Docket Number RSGM–89–23

The Depew, Lancaster and Western Railroad Co. Inc. (DLW) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives and one caboose. This equipment will be operated over approximately 3.1 miles of track between the towns of Depew and Lancaster, New York, which are suburban areas of Buffalo, New York. Most of the area in which this equipment will be working is industrial and is fenced. Additionally, the frequency of use is no more than twice weekly. The petitioner states that the cost to retrofit this equipment would result in a considerable expense.

The Duluth, Missabe and Iron Range Railway Company

Waiver Petition Docket Number RSGM–89–24

The Duluth, Missabe and Iron Range Railway Company (DMIR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for three passenger coaches. These cars will be operated less than five times per year, generally in excursion train service associated with the Lake Superior Museum of Transportation in Duluth, Minnesota, and one coach is used several times a year to provide private transportation for the President of the DMIR and his guests. Each of these cars will be used less than five times annually. Additionally, these cars will not be used for any general passenger service.

The Dakota Southern Railway Company

Waiver Petition Docket Number RSGM–89–26

The Dakota Southern Railway Company (DSRC) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for six locomotives. These locomotives will be operated over 187 miles of track in South Central South Dakota and will be servicing small rural communities. The petitioner states that they have no history of vandalism and feels that the cost to retorfit them would be an undue financial burden.

The Nittany and Bald Eagle Railroad Company

Waiver Petition Number RSGM–89–27

The Nittany and Bald Eagle Railroad Company (NBE) of Bellefonte, Pennsylvania, seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. These locomotives will be operated over approximately 63 miles of track through a rural area between Tyrone and State College, Pennsylvania. The petitioner states that there is no history of vandalism and feels that the cost to retrofit them would be difficult to justify.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB–90–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before November 7, 1990 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on September 4, 1990.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 90-21148 Filed 9-7-90; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

September 4, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0002
Form Number: ATF F 1600.7
Type of Review: Extension
Title: ATF Distribution Center Contractor Survey
Description: Information provided on ATF Form 1600.7 is used to evaluate the Bureau's Distribution Center contractor and the services it provides to users of ATF Forms and publications.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 250
Estimated Burden Hours Per Response: 5 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 2 hours

OMB Number: 1512-0133
Form Number: ATF F 5400.8
Type of Review: Extension
Title: Explosives Delivery Record
Description: This information collection activity is used to verify distributor's of explosives in commerce with Federal law and regulations, thereby documenting the flow of explosives in commerce; and as a tracing tool to prevent misuse and traffic in stolen explosives.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 1,000
Estimated Burden Hours Per Response: 2 hours, 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 2,500 hours
Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-21146 Filed 9-7-90; 8:45 am]

BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 4, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0054
Form Number: CF 3173
Type of Review: Extension
Title: Application for Extension of Bond for Temporary Importation
Description: Imported merchandise which is to remain in Customs territory for one year or less without duty payment is entered as temporary importation. The importer may apply for an extension of this period on CF 3173.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 1,155
Estimated Burden Hours Per Response: 10 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 2,694 hours

OMB Number: 1515-0078
Form Number: CF 1302 and CF 1302A
Type of Review: Extension
Title: Cargo Declaration and Cargo Declaration (Outward with Commercial Forms)
Description: Customs Forms 1302 and 1302A are used by the master of a vessel to list all inward cargo on board and for the clearance of all cargo on board with commercial forms.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 5,600
Estimated Burden Hours Per Response: 5 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 11,662 hours
Clearance Officer: Dennis Dore (202) 535-9267, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-21146 Filed 9-7-90; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 175
Monday, September 10, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m., September 17, 1990.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of last meeting.
2. Thrift Savings Plan activities report by the Executive Director.
3. Review of budgets for fiscal years 1991 and 1992.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Dated: September 4, 1990.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 90-21238 Filed 9-6-90; 8:45 am]

BILLING CODE 6760-01-M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

TIME AND DATE: 5:30 p.m., Monday, September 24, 1990.

PLACE: The U.S. Capitol, Room S–120, Washington, DC 20515.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Call to order.
2. Approval of minutes of April 4, 1990 meeting.
3. Report of the Chairman.
   a. Welcome and opening comments.
   b. Introduction of new Trustees.
   c. Truman Scholars Leadership Week and 1990 Awards Ceremony.
   d. Selection of 1990 Truman Scholars from Alaska, Arkansas and Wyoming.
   e. 1990 Public Service Leadership Conference with the George C. Marshall Foundation.
   f. Possible sequester and curtailment of Foundation activities in FY 1991.
5. Report of Executive Secretary
   a. Activities since the last board meeting.
   b. Presentation on the Truman Scholars Summer Institute.
   c. Priorities, budget and work plan for FY 1990.
   d. Financial status of the Truman Scholarship Foundation.
   e. Role of the Educational Testing Service.
6. Reports on "Sisters" of the Truman Scholarship Foundation:
   a. James Madison Foundation
   b. Barry Goldwater Foundation.
7. Resolution to empower the Chairman/Executive Secretary to enter/renew contracts, conclude agreements, and conduct other Foundation business.
8. New business.
9. Date, time and place of Spring Board Meeting.
10. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Louis H. Blair, Executive Secretary, Telephone (202) 395–4831.

Louis H. Blair,

Executive Secretary.

[FR Doc. 90-21203 Filed 9-6-90; 9:10 am]

BILLING CODE 6820-AB-M

POSTAL SERVICE

Amendment to Meeting; Board of Governors

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 FR 35499, August 30, 1990.

PREVIOUSLY ANNOUNCED DATE OF MEETING: September 11, 1990.

CHANGE: Delete the following item from the open meeting agenda:

5. Briefing on Potential FY 1991 Appropriations Sequestration—Gramm-Rudman.

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 90-21205 Filed 9-6-90; 9:15 am]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 55, No. 175
Monday, September 10, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lincomycin; Correction

Correction

In rule document 90-19627 appearing on page 34011 in the issue of Tuesday August 21, 1990, make the following correction:

On page 34011, in the second column, in the first paragraph, in the second line from the end, "charge" should read "change".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 21, 23, 25, 33, 34, 43, 45, and 91

[Docket No. 25613; Amdt Nos. 11-34, 21-68, 23-40, 25-70, 33-14, 43-33, 45-20, 91-218]

RIN 2120-AC62

Fuel Venting and Exhaust Emmission Requirements for Turbine Engine Powered Airplanes

Correction

In rule document 90-18788 beginning on page 32856 in the issue of Friday, August 10, 1990, make the following corrections:

1. On page 32856, in the second column, in the second paragraph, on the third line, "l970" should read "1970".

2. On page 32857, in the first column, in the first full paragraph, on the 20th line, "SFAN" should read "SFAR".

3. On the same page, in the same column, in the same paragraph, on the next to last line, insert "the" before "underlying".

4. On page 32858, in the third column, in the fifth paragraph, on the first line, insert "of" after "232".

§ 21.29 [Corrected]

5. On page 32860, in § 21.29(a)(1)(i), in the second column, on the fifth line, "provide" was misspelled.

PART 33--[AMENDED]

6. On page 32861, at the top of the second column, in the authority citation for part 33, on the third line, "January 22, 1983" should read "January 12, 1983".

PART 43--[AMENDED]

7. On the same page, in the same column, in the authority citation for part 43, on the third line, "January 22, 1983" should read "January 12, 1983".

§ 45.13 [Corrected]

8. On the same page, in the same column, in § 45.13(a)(7)(i), "Comply" should appear "COMPLY".

§ 34.1 [Corrected]

9. On page 32862, in § 34.1, in the third column, in the fourth paragraph, in the sixth line "specify" should read "specific".

§ 34.3 [Corrected]

10. On page 32863, in the first column, in § 34.3 in the next to last line of paragraph (a), "23l" should read "231".

§ 34.21 [Corrected]

11. On page 32865, in the first column, at the end of § 34.21(b), in the formula, after "r0" the power should read "-0.274".

§ 34.61 [Corrected]

12. On the same page, in the third column, in § 34.61, in the table, the word "values" should be deleted from the first column heading and added to the end of the second column heading.

§ 34.62 [Corrected]

13. On page 32866, in the first column, in § 34.62(a)(2), on the 10th line "manufacturers," should have appeared "manufacturers'".

§ 34.62 [Corrected]

14. On the same page, in the same column, in § 34.62(a)(3), in the table, the heading "Class" should be added above the second, third and fourth columns.

§ 34.64 [Corrected]

15. On the same page, in § 34.64, in the second column, add a comma after "Avenues" and "Street" in the 12th and 17th lines, respectively.

§ 34.82 [Corrected]

16. On the same page, in the third column, in § 34.82, on the 10th line, the CFR citation should read "1 CFR part 51.".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

[Docket No. 26305; Notice 90-18]

RIN 2120-AA09

Objects Affecting Navigable Airspace

Correction

In proposed rule document 90-18050 beginning on page 31722 in the issue of Friday, August 3, 1990, make the following corrections:

1. On pages 31729 and 31730, under **Regulatory Evaluation Summary**, the text was printed out of order and should appear as follows:

Introduction

Executive Order 12291 dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society for the regulatory change outweigh the potential costs. The order also requires the preparation of a draft Regulatory Analysis of all "major" proposals except those responding to emergency situations or other narrowly defined exigencies. A "major" proposal is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition or is highly controversial.

This proposed regulatory action is determined not to be "major" as defined in the executive order, so a full draft Regulatory Analysis identifying and evaluating alternative proposals has not been prepared. A more concise draft Regulatory Evaluation has been prepared, however, which is limited to only this proposal and does not identify

any alternatives. This draft evaluation is included in the docket, and quantifies, to the extent practicable, estimated costs to the private sector, consumers, Federal, State, and local governments, as well as anticipated benefits and impacts.

A summary of the draft Regulatory Evaluation is contained in this section. For a more detailed analysis, the reader is referred to the full draft evaluation contained in the docket. This section also contains an initial Regulatory Flexibility Determination required by the Regulatory Flexibility Act of 1980 and an International Trade Impact Analysis.

The primary objective of these proposed amendments to part 77 is to substantially revise and reorganize the regulation to enable the public to better understand its requirements. A secondary objective is to eliminate loopholes identified by aviation users and the FAA which allow disruption of air navigation operations. Finally, the rule defines the standards for the electromagnetic effects of construction or alteration that would require notice under this part and proposes the revocation of the rules of practice for hearings of subpart E and the antenna farm provisions of subpart F. This NPRM is a result of the recommendations of task group 2-3.2 of the NAR Program, the FAA's experience in the administration of the rule since its adoption on December 12, 1962, and the mandates of Public Law 100-223. In developing its recommendations, task group 2-3.2 reviewed part 77 in its entirety, taking into account a 1978 regulatory review of the rule along with the comments received on a 1980 draft document. The task group formulated 20 major recommendations which proposed multiple changes to subparts A through F of part 77.

These amendments would potentially affect the private and public sectors in the vicinity of the 5,920 public-use airports currently subject to this part. The FAA has determined that, with the exception of the new construction or alteration requirements defined in § 77.15(a)(4) (i) through (iv), the EMI notice criteria cited in § 77.15 (b)(1) through (b)(4) and the new notice requirements of the "20-foot antenna" provision specified in § 77.17(e), the balance of the proposals contained in this NPRM will have a negligible or no-cost impact.

The costs and benefits associated with this proposal are summarized below. Total costs associated with the amendments determined to have a cost impact are estimated to be between $239,000 and $402,000 over a ten-year period. Total benefits are estimated to be about $4 million over the same period. Those elements of the rule determined to have a negligible or no cost impact are identified and explained in appendix A of the full regulatory evaluation. The amendments contained in appendix A essentially restructure and clarify this part and are likely to produce cost savings as a result of improved understanding on the part of proponents, local officials, and the FAA. The savings associated with these improvements, however, are considered unquantifiable.

A copy of the Regulatory Evaluation prepared for this action is available for review in Docket No. 26305, and a copy may be obtained by contacting the person identified under the caption, **"FOR FURTHER INFORMATION CONTACT."**

Cost and Benefit Summary

Section 77.15(a)(4) (i) through (iv)—Construction or alteration requiring notice. The proposal adds new notice surfaces whose areas follow ground contours that are longitudinally centered on the runway centerline and which extend beyond the runway end no more than 3,000 feet and with widths no greater than 3,000 feet. Thus, any sponsor of a construction or alteration project located in the newly defined area that is of greater height than the elevation of the terrain at the proposed construction or alteration site must notify the FAA.

Costs: The proposal is likely to impose on proponents minimal discounted total costs ranging from $2,625 to $4,594 over the 10-year period following its enactment.

Benefits: The FAA has not been able to quantify the savings in time and resources to proponents, local officials, and to the FAA that would result from this proposal. However, if during the same 10-year period the proposal prevents the forced relocation of one navigational aid with a present value exceeding $4,577, the rule would be cost effective.

Section 77.15(b) (1), (2), (3), and (4)—Construction or alteration requiring notice. New § 77.15 (b)(1) through (b)(4) add electromagnetic construction or alteration notice criteria to part 77. Thus, sponsors of construction or alteration would be required to file notice with the FAA if their projects meet or exceed the following criteria—

(1) Any construction or alteration of a radio frequency transmitting station with an operating frequency above 30 Megahertz (Mhz) and an effective radiated power (ERP) above 10,000 watts that has its antenna physically located below the airport imaginary surfaces of § 77.25, § 77.28, or § 77.29 applicable to the airport concerned.

(2) Any initial or modified operation of a transmitting station, including a change in authorized frequency or effective radiated power, within 3,000 feet of an air navigation or communications aid.

(3) Any construction of a new FM or VHF-TV station utilizing an existing antenna tower.

(4) Any alteration, including changes in authorized frequency, effective radiated power, antenna height, and antenna type of existing FM and VHF-TV stations.

Costs: Compliance with proposed § 77.15 (b)(1) through (b)(4) is estimated to impose present value costs on proponents ranging from $237,000 to $397,000 over the 10-year period following enactment of the rule. These costs are based on the assumption that approximately 1500 proponents will be required to file notice annually under § 77.15 (b)(1) and (b)(3), and between 3000 and 6000 notifications will be required to be filed annually under § 77.15 (b)(2) and (b)(4).

Benefits: The prevention of disruptions of vital communications and navigational aids estimated to have a 10-year discounted value of approximately $4 million.

Section 77.17(e)—Construction or alteration requiring notice. Section 77.17(e) is amended to include notice requirements for antennae less than 20 feet in height that would increase the height of a structure for which a previous notice was required under this part.

Cost: The cost associated with compliance has not been quantified. The FAA believes however, that enactment of the proposal will result in relatively few new notices and, therefore, minimal costs.

Benefit: Benefits are not quantifiable. Undetermined benefits are expected to accrue to the aviation public from the prevention of disruption of the navigable airspace caused by low-height antennae in the vicinity of public-use airports. The FAA believes that the benefits of this proposal, although unquantifiable, will be greater than the minimal cost of compliance.

2. On page 31731, in the first column, in the first paragraph, in the eighth line, the Executive order number should read "12612".

§ 77.2 [Corrected]

3. On the same page, in the second column, in § 77.2, the first definition, "*A seaplane base*" should be deleted.

BILLING CODE 1505-01-D

federal register

Monday
September 10, 1990

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 30
Civil Money Penalties; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 30

[Docket No. R-90-1489; FR-2734-P-01]

RIN 2501-AA90

Civil Money Penalties

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to implement sections 107, 108, 109, 110, 111, 134 and parts of sections 102, 103, 112, and 126 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) ("Reform Act"). All of these sections authorize the Department of Housing and Urban Development (HUD) to impose civil money penalties for unlawful conduct in connection with a broad array of departmental programs. The purpose of the rule is to strengthen HUD's controls over the conduct of participants in its programs.

DATES: *Comment Due Date:* November 9, 1990.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708–4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708–2084). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: With respect to general application and procedural aspects, contact Samuel B. Rothman, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone number (202) 708–4184. With respect to violations under § 30.215 contact John Garrity, Director Urban Homesteading Program, room 7178, U.S. Department of Housing and Urban Development, 451 7th St., SW, Washington, DC 20410, telephone number (202) 708–0324. With respect to violations under §§ 30.220, 30.225, 30.235 and 30.240, contact William G. Heyman, Director, Office of Lender Activities and Land Sales Registration, room 9146, U.S. Department of Housing and Urban Development, 451 7th St., SW, Washington, DC 20410, telephone number (202) 708–1824. With respect to violations under § 30.230, contact Guy Wilson, Vice President, Office of Mortgage-backed Securities, room 6224, Government National Mortgage Association, U.S. Department of Housing and Urban Development, 451 7th St., SW., Washington, DC 20410, telephone number (202) 708–2772. With respect to violations under §§ 30.200, 30.205 and 30.210, contact Gwen Wells, Director, Office of Ethics, room 2158, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone number (202) 708–3815. (None of the listed phone numbers is a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

There are no new information collection requirements contained in this rule. All referenced information collection requirements have been approved previously by the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Specifically, the requirements of § 30.220(g)(1) are set forth in 24 CFR 203.1–203.7 (OMB Control No. 2502–0005); the requirements of § 30.220(o) are set forth in 24 CFR 203.365, 203.366 and 203.368 (OMB Control No. 2502–0347); the requirements of section 30–225(b)(8)–(11) are set forth in 24 CFR 207.19(f) (OMB Control No. 2502–0324); and the requirements of § 30.230(a)(7) and (c)(2) are set forth in the several GNMA Guaranty Agreements (OMB Control Nos. 2503–0014 and 2503–0008).

Introduction

This proposed rule would implement the Department of Housing and Urban Development Reform Act of 1989 in the following ways:

(a) As to section 102 of the Reform Act, this rule would provide the procedural framework for imposing civil money penalties on applicants for HUD assistance who failed to make required disclosure to HUD in connection with their efforts to obtain assistance. Regulations specifying the proscribed conduct will be set forth in a new rule establishing 24 CFR part 12.

(b) As to section 103, this rule would provide the procedural framework imposing civil money penalties on HUD employees who disclose information regarding the selection process in connection with applications for certain assistance prior to the availability of that information to the public. Regulations specifying the proscribed conduct will be set forth in a proposed rule establishing 24 CFR part 4.

(c) As to section 107, this rule would provide the procedural framework for imposing civil money penalties on mortgages and lenders involved in HUD programs. The rule also would specify the types of proscribed conduct for which lenders and mortgagees may be made subject to penalties.

(d) As to sections 108 and 109, this rule would provide the procedural framework for imposing civil penalties upon owners of properties comprising five or more residential units (multifamily mortgagors) when those properties are subject to mortgages insured, co-insured, or held by the Secretary. Sections 108 and 109 apply to mortgagors of Federal Housing Administration (FHA) projects and to projects financed under section 202 of the Housing Act of 1959. The rule also would specify the types of proscribed conduct for which multifamily mortgagors may be subject to penalties.

(e) As to section 110, this rule would provide the procedural framework for imposing civil money penalties on issuers and custodians who have been approved for participation in the programs of the Government National Mortgage Association (GNMA). The rule also would specify the types of proscribed conduct for which issuers and custodians may be subject to penalties.

(f) As to section 111, this rule would provide the procedural framework for imposing civil money penalties on any person who violates the Interstate Land Sales Full Disclosure Act. Because the violations for which a person may be subject to penalties under the Land Sales Act pertain to any violation of the Land Sales Act, its regulations, or orders issued under the Land Sales Act, no additional rulemaking is necessary to specify the violations for which penalties may be imposed.

(g) As to section 112, this rule would provide the procedural framework for imposing civil money penalties on persons who make expenditures to

influence decisions of HUD officials. A rule specifying proscribed conduct by such persons is being promulgated in a separate proposed rulemaking that would establish 24 CFR part 86.

(h) As to section 126, this rule would provide the procedural framework for imposing civil money penalties on persons who improperly use or convey property that has been transferred to them under HUD's Urban Homestead Program pursuant to section 810 of the Housing and Community Development Act of 1974. The persons who may be subject to sanction for violating section 810 are states, units of general local government and public agencies and qualified community organizations designated by those local government units, and their transferees.

Although the Reform Act is silent with respect to public agencies and qualified community organizations designated by states, section 810 of the 1974 Act includes such entities in the Urban Homestead Program. The Department may seek a technical amendment to section 126 of the Reform Act that would conform it to the scope of section 810 of the 1974 Act. If that amendment should be enacted, the Department would make the corresponding regulatory change summarily.

(i) As to section 134, this rule would provide the procedural framework for imposing civil money penalties on any dealer or loan broker who makes, or causes a borrower to make, a false statement to the Secretary or to a financial institution in connection with an application for a property improvement loan or advance of credit under title I of the National Housing Act. Specific types of proscribed conduct are set forth in the proposed rule.

Overview

Part 30 primarily comprises procedural rules. However, in cases where the Reform Act established civil money penalties in connection with existing programs, specifically authorizing penalties for conduct in large part already considered unlawful by HUD, practices violative of these existing programs are included in this rule. After a period of operation the Department may evaluate this arrangement to consider moving these substantive portions of the rule to the respective parts in the Code of Federal Regulations covered these programs.

By contrast, this rule is exclusively procedural with respect to the completely new sanctions created under the Reform Act. For example, the requirement that consultants and lobbyists now register and report to HUD would be implemented in 24 CFR part 86; any conduct that might give rise to the imposition of a civil penalty upon a consultant or other person who attempts to influence an official HUD decision will appear only in the soon-to-be published part 86.

Subpart A—General Provisions

Subpart A is one of general application. It recites the authority for the Secretary to impose civil penalties and authorizes the Secretary to delegate his or her authority to the Assistant Secretaries specified in subpart B, each of whom is authorized to redelegate that authority. However, the authority to review decisions or orders of the administrative law judge who hears penalty appeals is retained at the Secretarial level.

The definitions are based on common sense or on the enabling statute. The reason for the limited number of defined terms is that other relevant terms are defined elsewhere in HUD regulations. Note, however, the definition of "loan broker" in § 30.10. "Loan broker" is a term added by the Reform Act but not currently part of the title I official lexicon. The Department is currently revising its title I regulations (24 CFR parts 201, and 202), and expects to publish proposed amendments in the fall of 1990. Those amendments will include a definition of "loan broker," and it is to that definition that this rule would refer. Though predictions are risky, the Department hopes that the effective dates for the respective rules will fall within 120 days from each other. This subpart also make clear that a civil money penalty is not an exclusive sanction, and that, potentially, it can be a cumulative sanction. Thus, the Secretary, for example, may elect to pursue a civil penalty and a debarment, or a civil penalty and an injunction against a person who commits a violation under subpart C.

Subpart B—Civil Money Penalty Panels

Subpart B would create four panels that would evaluate cases for which civil penalties may be imposed and decide whether or not to file a complaint seeking penalties.

One panel would deal with FHA housing programs, property improvement loans and housing for the elderly and handicapped under section 202 of the Housing Act of 1959. This panel, to be known as the Housing Civil Penalties Panel, would include the Assistant Secretary for Housing as chairman and three Deputy Assistant Secretaries within the Office of Housing, plus a non-voting legal advisor. Also, when a case involves HUD's nondiscrimination requirements, this panel would include the Deputy Assistant Secretary for Fair Housing Enforcement. Each voting member may delegate his or her responsibility for service on the panel.

A second panel, to be known as the Government National Mortgage Association Civil Penalties Panel, would evaluate cases for violations by issuers and custodians in the GNMA programs. This panel would include the President of GNMA as chairman, the Executive Vice President, the Vice President of Mortgage-Backed Securities, the Vice President of Asset Management, the Vice President of Finance, or their designees, plus a non-voting legal advisor. In addition, the Chairman may appoint up to three other GNMA officials to serve on the panel. However, those additional officials may serve only in an advisory capacity.

The third panel, to be known as the Departmental Civil Penalties Panel, would include the Assistant Secretaries for Housing, Administration, Community Planning and Development, Public and Indian Housing, Fair Housing and Equal Opportunity, and Policy Development and Research, and the President of GNMA, or their designees. This panel would also include a non-voting legal advisor. The rule would provide for the Secretary to designate one Assistant Secretary to chair the panel and one Assistant Secretary to serve as Vice Chairman on an annual basis. This panel would hear cases that deal with alleged violations by employees who improperly disclose information regarding the selection of an applicant for assistance prior to the final selection of the applicant. Generally, the type of assistance covered in this context is assistance for which there is competition among applicants. This panel also would evaluate cases in which applicants for assistance have failed to make certain disclosures in connection with their applications. As in the case of HUD employees, the type of assistance covered generally entails some competitive process. Additionally, this panel would evaluate cases in which persons who have made expenditures to influence official HUD decisions have failed to register with the Department or failed to make certain reports to the Department. Finally, this panel would consider cases involving violations in the conveyance or use of properties made available under HUD's Urban Homestead program. For example, the Department may seek to sanction a local government agency that conveys a homestead property but fails to impose the conditions required of the

transferee in consideration of the transfer.

The fourth panel would be the Mortgagee Review Board. Its composition was established by section 142(c) of the Reform Act, which is implemented by 24 CFR part 25. (The Board's composition and voting requirements are found at § 25.4) The Department has had a Mortgagee Review Board in operation for several years. Its mission has been, and continues to be under its statutory authorization, to oversee the activities of HUD-approved mortgagees and lenders and to sanction them for conduct found to be improper, after an opportunity for an administrative hearing. The major change that accompanied the statutory creation is the Board's new authority to seek civil money penalties. The Board and the Housing Civil Penalties Panel have overlapping jurisdiction. The Department has decided that where overlapping jurisdiction exists, the latter panel would act when only a civil money penalty is sought and that the Board would act when both a civil money penalty and another administrative sanction are sought.

A decision by any panel to propose penalties must have been reached by a majority decision of the voting members, three of whom will constitute a quorum—four for the Mortgagee Review Board, and criteria for determining the amount of a penalty are included in this subpart. The maximum amount of each penalty is prescribed by statute and also is included in this subpart.

An exception to the Reform Act's prescription of maximum penalty amounts is found in its section 126, which prescribes a minimum penalty. In view of the fact that the imposition of civil penalties under the statutory authority is discretionary, the rule would prescribe an alternative maximum penalty, which is intended to assure recovery of homestead funds the government had allocated. Specifically, the rule would establish as the maximum civil money penalty the greater of two times the amount of the gross profit realized by the violator or the amount of the section 810 urban homestead funds used to reimburse HUD, VA, RTC or FmHA for the federally-owned property.

Subpart C—Violations

Subpart C comprises a series of lists of violations which may subject the alleged violator to civil penalties. No penalty will be imposed for a violation alleged to have been committed before December 15, 1989, the effective date of the Reform Act. However, any history of offenses, including those that occurred before that date, may be used by a civil penalties panel in reaching its recommendation for the amount of a penalty. With respect to Reform Act section 102, dealing with accountability of applicants for assistance, and section 112, dealing with the registration of consultants, HUD would not seek to impose penalties until the effective date of the rule. The Reform Act specifies such an effective date for applicability of these sections. In the opposite direction, section 126 of the Reform Act authorizes the imposition of a civil money penalty of a violation related to a transfer of property after January 1, 1981. Comment is specifically invited to address this statutory authorization.

Normally, each separate event that gives rise to a violation will be treated as a separate violation. In the case of a continuing violation, each day will be considered a separate violation. Continuing violations will be determined on the basis of a case-by-case evaluation.

It is important to keep in mind that a violation, to be actionable, must have been a material violation, knowingly committed. The Department considers this standard to be the equivalent of gross negligence. Thus, the mere failure to perform an act or the improper performance of an act per se will not constitute a violation for purposes of this part.

The types of violations that might warrant imposition of a civil penalty include, but are not limited to the following:

(a) The failure by an applicant for assistance to disclose information with respect to that application, including information regarding any assistance from other government agencies at any level, or the financial interest of a developer in the project or activity for which assistance is sought. Note, however, that there is a $200,000 assistance threshold per fiscal year before these disclosure requirements apply.

(b) An officer or employee of HUD who discloses, to any person not authorized to receive the disclosure, any information regarding the selection of a candidate for HUD assistance.

(c) A lender, mortgagee or GNMA issuer that transfers an insured loan, mortgage or pool of such mortgages to another lender, mortgagee or GNMA issuer not approved by the Secretary, improperly uses escrow funds, or fails to comply with an agreement or condition of approval with respect to its application for approval.

(d) A multifamily mortgagor (a mortgagor of a property that includes five or more residential units, including elderly and handicapped housing) that violates its regulatory agreement or certain specific agreements to which the Secretary agreed in exchange for the mortgagor's agreeing to use non-project income for certain specified purposes. For example, the Secretary might agree to a flexible subsidy loan conditioned on the mortgagor's use of non-project income to make principal and interest payments under the note and mortgage. It is HUD's intention to harmonize enforcement of civil money penalties with other program objectives. For example, § 30.225(b)(4) creates potential liability for a project mortgagor that remodels, reconstructs or demolishes any part of a project without HUD's prior written approval. On the other hand the Fair Housing Act requires landlords to permit modification necessary for handicapped persons to enjoy their housing and does not permit landlords to reject applicants because they wish to make their own modifications. Further, a mortgagor delaying entry to a project to a disabled person who wants to modify a residential unit could be deemed to have violated section 504 of the Rehabilitation Act of 1973. Accordingly, HUD would not seek to penalize a mortgagor if a disabled tenant modified his or her apartment to accommodate the tenant's disability prior to any formal approval procedure.

(e) Any violation of the provisions of Title III of the National Housing Act or any implementing regulations, GNMA Handbook, Guide or participant letter.

(f) Any violation of the Interstate Land Sales Full Disclosure Act, or of any regulation prohibiting conduct under the Land Sales Act, or any violation of an order issued under the Land Sales Act's authority. Statutory violations may be found at 15 U.S.C. 1703, regulatory violations at 24 CFR parts 1710, 1715 and 1720. Based on administrative adjudications issued over the several years the Interstate Land Sales program has been in existence the Department is recognizing a materiality presumption in connection with Interstate Land Sale violations. Specifically, § 30.235 includes a rebuttable presumption that all violations of the Land Sales Act or its implementing regulations are per se material violations.

(g) Any dealer or loan broker who makes a false statement to the Secretary or to a financial institution in connection with a Title I property improvement loan; for example, encouraging a borrower to overstate the cost of improvements to be made, or encouraging a borrower to certify that

improvements have been made when they have not been.

Subpart D—Procedural Rules

Subpart D is dividend into seven functional segments. The first segment is one of general applicability. It provides that the procedural rules apply not only to violations of programs authorized by the Reform Act but also to any other comparable statutory authority HUD might receive in the future, unless there is some other applicable specific statute or regulation. The general provisions also inform that civil penalties proceedings will be presided over by an administrative law judge (ALJ) and delineate the ALJ's authority, which includes the authority to impose sanctions for certain misconduct, such as failure to cooperate in discovery or to obey the ALJ's orders. Sanctions include admitting into evidence facts to which the offending party fails to respond upon a request for admissions, or striking parts of the offending party's pleading. Among other provisions of this area are those governing representation of parties, requirements for form, filing and service of documents and the procedure for obtaining and the issuance of subpoenas for all purposes.

The next functional segment deals with pleadings and motions. After a civil penalties panel has decided to impose a penalty, it must do so through the filing of a Complaint with the Office of Administrative Law Judges. (In the case of a complaint against a lender or mortgagee, or a GNMA issuer or custodian, the panel also must notify the Attorney General.) In addition to setting forth the alleged violations and the amount of the penalty imposed, the Complaint must inform the respondent of the procedures for requesting a hearing and the consequences of failing to request a hearing. This subpart then prescribes the procedures and the requirements for the respondent to file an Answer. Amendments and supplemental pleadings may be permitted along the same lines as they are permitted under the Federal Rules of Civil Procedure.

Discovery is the subject of the next segment, which provides for depositions, written interrogatories, production of documents and other things, and admissions by parties. The rules prescribe the procedure for taking, using and objecting to the use of depositions or parts of depositions. Provision also is made for objecting to interrogatories and other discovery methods. Finally, this segment provides a method whereby a party may obtain relief for an opponent's failure to cooperate in discovery. Certain sanctions are available and were noted earlier in the context of the administrative law judge's authority.

A discrete segment has been allotted to pre-hearing procedures. A pre-hearing statement may be ordered by the ALJ. Such a statement is roughly comparable to a pretrial order in district court practice and would contain such information as: (1) Stipulated facts, (2) facts in dispute, (3) issues involved and (4) identification of witnesses and exhibits. A pre-hearing conference also may be ordered for the traditional purposes of simplifying and clarifying issues, amending pleadings, stipulating to authenticity of documents and exchanging proposed exhibits.

A separate segment is provided for hearings, which generally will be on the record with oral testimony. However, by agreement the parties may stipulate to a hearing on the written record if there are no material issues of law or fact. Common standards of admissibility in administrative proceedings are provided in the evidence section, relevance being the hallmark. "Preponderance of the evidence" is the standard of proof. Any proceeding will be recorded and transcribed, and briefs may be submitted at the close of the hearing.

An extensive procedure is provided in the event that a respondent fails to answer a Complaint and a default judgment is entered against the respondent. If the respondent can demonstrate in a notice to the Secretary that extraordinary circumstances were the cause of the failure to answer, the Secretary may remand the matter to the ALJ with a direction that the respondent be permitted to file an answer.

After a hearing, the ALJ issues an initial decision. Any party is allowed 10 days after the decision is filed to appeal to the Secretary. The Secretary or his or her designee will review the notice of appeal and, within 30 days, will determine whether to hear the case in full. If the Secretary declines to hear the case, then the initial decision becomes final on the date the decision to decline is filed with ALJ's docket clerk. If the Secretary accepts the case for review, then the Secretary's decision after review becomes final on the date it is filed with the ALJ's docket clerk.

Within 20 days after the Secretary's final decision has been filed a respondent may appeal that decision by filing a petition for review with the appropriate United States Court of Appeals. If the respondent receives an adverse ruling from the Court of Appeals or does not appeal an adverse ruling from the Secretary, the Secretary may collect from a recalcitrant respondent by seeking a judgment in the U.S. District Court and may ask for attorney fees and other expenses incurred in connection with that action. The validity of the Secretary's decision imposing the penalty is not subject to review by the district court. As an alternative method of collection, the Secretary may utilize administrative offset to the extent legal and feasible.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would implement legislation authorizing HUD to impose civil money penalties on certain participants and would establish hearing procedures that are required to be followed before the imposition of the penalty. A penalty may be imposed only upon a knowing and material violation of specified HUD programs criteria which would limit further the participants affected.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule would not have substantial, direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the

distribution of power and responsibilities among the various levels of government. Though there is potential for some effect on States or their political subdivisions because of their participation in HUD programs, the effect would be attributable to the authorizing legislation. The primary creation of this rule would be a procedure for administrative review.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule would not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule would apply to business relationships with HUD and the procedures that apply when persons in those relationships violate HUD requirements.

This rule was listed as Item No. 1116 in the Department's Semiannual Agenda of Regulations published on April 23, 1990 (55 FR 16226, 16233) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 30

Administrative practice and procedure, Civil money penalties, Reporting and recordkeeping requirements.

Accordingly, subtitle A of title 24 of the Code of Federal Regulations is proposed to be amended by adding a new part 30, to read as follows:

PART 30—CIVIL MONEY PENALTIES; CERTAIN PROHIBITED CONDUCT

Subpart A—General Provisions

Sec.

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30.5 Authority and delegation.
30.10 Definitions.
30.15 Cumulative remedy.

Subpart B—Civil Money Penalty Panels

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30.105 Name and composition.
30.110 Jurisdiction of panels.
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30.130 Majority decision.
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Subpart C—Violations

30.200 Applicants' failure to disclose information.
30.205 Improper disclosure by HUD employees.
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30.305 Administrative Law Judge (ALJ).
30.310 *Ex parte* communications.
30.315 Representation.
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30.325 Form, filing, and service.
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30.400 Complaint.
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Discovery

30.500 Discovery.
30.505 Depositions.
30.510 Use of depositions at hearings.
30.515 Objections to use of depositions.
30.520 Written interrogatories.
30.525 Production of documents and other things; entry on land for inspection and other purposes.
30.530 Admissions.
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Pre-hearing Procedures

30.600 Pre-hearing statements.
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Hearings

30.700 The hearing.
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30.710 Evidence and standard of proof.
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Defaults and Decisions

30.800 Default upon failure to file an Answer.
30.805 Initial decision.
30.810 Finality and Secretarial review.

Judicial Review and Collection of Civil Penalties

30.900 Judicial review.
30.905 Collection of penalties.
30.910 Offset.

Authority: Sections 107–111, 126 and 134, Department of Housing and Urban Development Reform Act of 1989, Pub. L. 100–235 (Approved December 15, 1989) (12 U.S.C. 1735f–14, 1735f–15, 1701q–1, 1723i, 15 U.S.C. 1717a, and 12 U.S.C. 1703, respectively); sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 30.1 Purpose and scope.

This part explains the structure of the enforcement apparatus for imposition of penalties which the Secretary of Housing and Urban Development is authorized to impose by the HUD Reform Act of 1989 (Pub. L. 101–235), and sets forth the procedures for the assessment of penalties. These procedures include administrative hearings and appeals, judicial review and collection of penalties. The procedural rules in Subpart D of this part apply to all civil penalty proceedings initiated by the Department unless there are other, specific regulations or statutes that govern such proceedings, *e.g.*, 24 CFR part 28.

§ 30.5 Authority and delegation.

The Secretary's authority to impose civil penalties is delegated to the officers identified in subpart B, who may redelegate such authority except the authority to review decisions or orders of the Administrative Law Judge.

§ 30.10 Definitions.

Because this part is primarily procedural, terms not defined in this section shall have the meanings given them in relevant program regulations. In the case of new responsibilities and new terminology established by the Reform Act, comprehensive definitions can be found in 24 CFR parts 4 (Prohibition of Advance Disclosure of Funding Decisions), 12 (Accountability in the Provision of HUD Assistance) and 86 (Requirements Governing the Lobbying of HUD Personnel).

Agent means any person who acts on behalf of another person and includes officers, directors, partners and trustees.

ALJ means an administrative law judge in HUD appointed pursuant to 5 U.S.C. 3105 or detailed to HUD pursuant to 5 U.S.C. 3344.

Dealer means a seller, contractor or supplier of goods or services having a direct or indirect financial interest in the transaction between the borrower and the lender, and who assists the borrower in preparing the credit application or otherwise assists the borrower in obtaining the loan from the lender.

Department or *HUD* means the Department of Housing and Urban Development.

Government means the United States Government.

Knowing or *Knowingly* means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under

subpart C of this part or under 24 CFR parts 4, 12 or 86.

Loan broker means a loan correspondent as defined in 24 CFR 201.2(q) and 202.2(b)

Material or *Materially* means in some significant respect or to some significant degree.

Person means an individual, corporation, company, association, authority, firm, partnership, society, state, local government or agency thereof, or any other organization or group of people.

Respondent means any person alleged in a Complaint under § 30.400 to be liable for a civil money penalty.

Secretary means the Secretary of Housing and Urban Development.

§ 30.15 Cumulative remedy.

A civil money penalty may be imposed in addition to other administrative sanctions or any other civil remedy or criminal penalty.

Subpart B—Civil Money Penalty Panels

§ 30.100 Establishment of panels.

There are hereby established four panels whose purpose it is to review recommendations for and to propose civil money penalties. Three voting members of a panel shall constitute a quorum, except for the Mortgagee Review Board, for which four voting members are required.

§ 30.105 Name and composition.

(a) *Housing.* The Housing Civil Penalties Panel (HCPP) is composed of the Assistant Secretary for Housing as Chairman, the Deputy Assistant Secretary for Policy, Financial Management and Administration, the Deputy Assistant Secretary for Multifamily Housing Programs, the Deputy Assistant Secretary for Single Family Housing and the Deputy Assistant Secretary for Administration or their designees, and a designee of the General Counsel who serves in a non-voting, advisory capacity. When a case that involves an alleged violation of any of HUD's nondiscrimination requirements is brought before the HCPP, the HCPP shall include the Deputy Assistant Secretary for Fair Housing Enforcement, or his designee. In the absence of the Assistant Secretary for Housing members shall serve as chairman in the order listed in this subsection.

(b) *Government National Mortgage Association (GNMA).* The Government National Mortgage Association Civil Penalties Panel (GCPP) is composed of the President of GNMA as chairman, the Executive Vice President, the Vice President of Mortgage-Backed Securities, the Vice President of Asset Management, the Vice President of Finance, or their designees, and a designee of the General Counsel who serves in a non-voting, advisory capacity. The Chairman of the GCPP may appoint up to three additional GNMA officials to this panel to serve only in a non-voting, advisory capacity. In the absence of the President, members shall serve as chairman in the order listed in this subsection.

(c) *Departmental.* The Departmental Civil Penalties Panel (DCPP) is composed of the Assistant Secretaries for Administration, for Community Planning and Development, for Fair Housing and Equal Opportunity, for Public and Indian Housing, for Housing, for Policy Development and Research and the President of the Government National Mortgage Association (GNMA) or their designees. The panel will also include a non-voting legal advisor designated by the General Counsel. Panel members' designees must hold a position not lower than the Office Director level. The Secretary will appoint a chairman and a vice-chairman not later than January 1 of each year.

(d) *Mortgagees.* The Mortgagee Review Board (MRB) is composed of the members identified in 24 CFR 25.4.

§ 30.110 Jurisdiction of panels.

(a) *HCPP.* The HCPP proposes penalties in cases involving violations described in subpart C by:

(1) Mortgagees approved under the National Housing Act and lenders holding contracts of insurance under Title I of the National Housing Act, 12 U.S.C. 1703.

(2) Mortgagors of property that includes five or more living units and is subject to a mortgage insured, co-insured or held pursuant to the National Housing Act, 12 U.S.C. 1702, *et seq.;*

(3) Mortgagors of property that includes five or more living units and is subject to a mortgage pursuant to section 202 of the Housing Act of 1959, 12 U.S.C. 1701q;

(4) Any person under the Interstate Land Sales Full Disclosure Act, 15 U.S.C 1702, *et seq.;* and

(5) Any dealer or loan broker that provides assistance to a borrower in obtaining a property improvement loan or advance of credit under title I, section 2 of the National Housing Act, 12 U.S.C. 1703.

(b) *GCPP.* The GCPP proposes penalties in cases involving violations described in subpart C of this part by an issuer or custodian approved under section 306(g) of the National Housing Act, 12 U.S.C. 1721(g).

(c) *DCPP.* The DCPP proposes penalties in cases involving violations described in subpart C of this part by:

(1) Any applicant for assistance within the jurisdiction of the Department as described in 24 CFR part 12;

(2) Any officer or employee of the Department as described in 24 CFR part 4; and

(3) Any person who makes an expenditure to influence the decision of any officer or employee of the Department with respect to the award of or change in any financial assistance within the jurisdiction of the Department as described in 24 CFR part 86; and

(4) Any state, unit of general local government or its designated public agency or qualified community organization, or a transferee of property from any such entity under 12 U.S.C. 1706e with respect to the use or conveyance of such property.

(d) *MRB.* The MRB proposes penalties in cases involving violations described in subpart C of this part by mortgagees approved under the National Housing Act and lenders holding contracts of insurance under title I of the National Housing Act, 12 U.S.C. 1703. However, the MRB will propose a penalty only when the proposal is made in conjunction with other administrative sanctions the MRB is authorized to undertake.

§ 30.115 Criteria for determining amount of penalty.

(a) In determining the amount of a penalty to be proposed for a violation under subpart C of this part, the HCPP, the GCPP, the DCPP and the MRB shall consider, among other factors, the following:

(1) The gravity of the offense;

(2) Any history of prior offenses, including those before enactment of the Reform Act, Pub. L. 101–235;

(3) The ability to pay the penalty;

(4) The injury to the public;

(5) Any benefits received by the violator;

(6) Extent of potential benefit to other persons; and

(7) Deterrence of future violations.

(8) With respect to a violation under § 30.215, the expenditures made by the violator in connection with any gross profit derived.

(b) In addition to the above factors, the HCPP shall also consider:

(1) Any injury to tenants;

(2) Any injury to lot owners.

§ 30.120 Calculation of penalty.

In calculating the amount of the penalty to be proposed the HCPP, the GCPP, the DCPP and the MRB shall

establish guidelines which will take into account the seriousness of the violations involved.

§ 30.125 Amount of penalty.

The maximum amounts of penalties determined by the Secretary shall be:

(a) $10,000 for each violation of 24 CFR 12.34.

(b) $10,000 for each violation of 24 CFR 4.100.

(c) For a violation of § 30.215, an amount not to exceed the greater of two times the amount of the gross profit realized by the violator from any impermissible use or conveyance of property made available under section 810 of the Housing and Community Development Act of 1974, as amended, 12 U.S.C. 1706e, or the amount of section 810 funds used to reimburse HUD, VA, RTC or FmHA for the property. In the event of an unauthorized use of property still retained by the violator, the gross profit shall include the difference between the amount paid for the property by the violator and its current value as determined by an independent appraiser whose qualifications meet current HUD standards.

(d) $5,000 for each violation of § 30.220, except that the maximum penalty for all violations by any particular mortgagee or lender during any one-year period shall not exceed $1 million. Each violation shall constitute a separate violation with respect to each mortgage or loan application.

(e) For a violation of § 30.225(a), an amount not in excess of the amount of the loss the Secretary would experience at a foreclosure sale, or a sale after foreclosure, of the property involved.

(f) $25,000 for a violation of § 30.225(b).

(g) $5,000 for each violation of § 30.230, except that the maximum penalty for all violations by a particular issuer or custodian during any one year period shall not exceed $1 million. Each violation shall constitute a separate violation with respect to each pool of mortgages.

(h) $1,000 for each violation of § 30.235, except that the maximum penalty for all violations by a particular person during any one year period shall not exceed $1 million. Each violation of this title, or any rule, regulation, or order issued under this title, shall constitute a separate violation with respect to each sale or lease or offer to sell or lease.

(i) $5,000 for each violation of § 30.240, except that the maximum penalty shall not exceed $1 million for all violations by any dealer or loan broker during any one-year period. Each violation of a provision of § 30.240 shall constitute a separate violation with respect to each mortgage or loan application.

(j) $10,000 for each violation of 24 CFR 86.35, or the total amount received for any services performed for any applicant to which the violation relates, whichever is greater.

§ 30.130 Majority decision.

The decision by any panel to propose a civil money penalty must be supported by a majority vote, and each panel shall maintain a written record of its vote on each case it considers.

§ 30.135 Notice after determination.

If the HCPP, the GCPP, or the DCPP or the MRB determines to propose a penalty, it shall:

(a) Prepare, with the advice of counsel, a Complaint to be filed and served in accordance with §§ 30.400 and 30.325.

(b) In the case of a violation of § 30.220 (e) or (f), or of § 30.230(a)(10), also send written notice of its intention to the Attorney General.

Subpart C—Violations

§ 30.200 Applicant's failure to disclose information.

Pursuant to § 30.110(c)(1), the DCPP may propose a civil money penalty on any applicant for assistance in accordance with 24 CFR 12.34(b).

§ 30.205 Improper disclosure by HUD employees.

Pursuant to § 30.110(c)(2), the DCPP may propose a civil money penalty on any officer or employee of the Department in accordance with 24 CFR 4.110.

§ 30.210 Failure to register or report by consultants.

Pursuant to § 30.110(c)(3), the DCPP may propose a civil money penalty on any person in accordance with 24 CFR 86.35

§ 30.215 Urban Homestead violations.

Pursuant to § 30.110(c)(4), the DCPP may propose a civil money penalty on any person who knowingly and materially violates section 810 of the Housing and Community Development Act of 1974, as amended, 12 U.S.C. 1706e, or the regulations at 24 CFR part 590, in the use or conveyance of property made available under the Urban Homestead Program. Notwithstanding any other provision of this part, such penalties are authorized with respect to any property transferred for use under section 810 after January 1, 1981 to a state, a unit of general local government, or a public agency or qualified community organization designated by a unit of general local government, or a transferee of any such entity.

§ 30.220 Violations by mortgagees and lenders.

Pursuant to § 30.110(a)(1), the HCPP or the MRB may propose a civil money penalty on any mortgagee or lender who knowingly and materially:

(a) Transfers an insured mortgage to a mortgagee not approved by the Secretary;

(b) Transfers a title I insured loan to a person who does not hold a contract of insurance under title I of the National Housing Act;

(c) Fails, if a non-supervised mortgagee (as defined at 24 CFR 203.4):

(1) To segregate all escrow funds received from a mortgagor for ground rents, taxes, assessments and insurance premiums; or

(2) To deposit these funds in a special account with a depository whose accounts are insured by the Federal Deposit Insurance Corporation or by the National Credit Union Administration.

(d) Uses escrow funds for any purpose other than that for which they were received or fails to use escrow funds for the purposes for which they were received;

(e) Submits to the Secretary false information in connection with any insured mortgage or any loan covered by a contract of insurance under title I of the National Housing Act;

(f) Falsely certifies to the Secretary or submits to the Secretary a false certification by another person;

(g) Fails to comply with an agreement, certification or condition of approval in connection with:

(1) A mortgagee or lender's application for approval by the Secretary pursuant to 24 CFR 203.1–203.7; or

(2) A mortgagee or lender's notice to the Secretary concerning the establishment of a branch office pursuant to 24 CFR 203.3 or 203.4.

(h) Hires an agent of a mortgagee or lender whose duties will involve, directly or indirectly, programs administered by the Secretary while the agent was under suspension or withdrawal by the Secretary; or retains an agent who continues to be involved, directly or indirectly, in programs administered by the Secretary while the agent was under suspension or withdrawal by the Secretary;

(i) Fails to comply with the requirements of 24 CFR 201.27(a) regarding approval and supervision of dealers;

(j) Approves a dealer that has been suspended, debarred or otherwise denied participation in the Department's programs;

(k) Makes a payment that is prohibited under 24 CFR 203.1(b);

(l) Fails to remit, or timely remit mortgage insurance premiums, late charges or interest penalties, or loan insurance charges;

(m) Permits loan documents for an FHA insured loan to be signed in blank by its agents or any other party to the loan transaction;

(n) Fails to follow the mortgage assignment procedures set forth at 24 CFR 203.650 through 203.664.

(o) Fails to timely submit documents that are complete and accurate in connection with a conveyance of property or a claim for insurance benefits in accordance with 24 CFR 203.365, 203.366 or 203.368;

(p) Fails to:

(1) Process requests for formal release of liability under an FHA insured mortgage;

(2) Obtain adequate information as to the creditworthiness of a person assuming an FHA insured mortgage; or

(3) Timely report delinquent individual mortgagors to credit reporting agencies;

(4) Report all delinquent mortgages to the Department as required in 24 CFR 203.332.

(q) Fails to service FHA insured mortgages in accordance with the requirements of 24 CFR Part 235, subparts A, B and C;

(r) Fails to fund loans that it originated;

(s) Violates any provision of title I or II of the National Housing Act, or title X of that Act (as such title existed immediately before the effective date of the Department of Housing and Urban Development Reform Act of 1989), or any other implementing regulation or handbook that is issued under the Act.

§ 30.225 Violations by multifamily mortgagors.

(a) Pursuant to § 30.110(a) (2) or (3), the HCPP may propose a civil money penalty on any mortgagor of property that includes five or more living units and is subject to a mortgage insured, co-insured or held by the Secretary (a "project") who knowingly and materially fails to comply with its written agreement to use non-project funds to:

(1) Make payments due under the note and mortgage;

(2) Make payments to the reserve for replacement account;

(3) Restore the project to good physical condition; or

(4) Make payments satisfying other project liabilities, provided that the agreement was made as a condition for approval of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of mortgage terms or a workout agreement.

(b) The HCPP also may propose civil money penalties on any project mortgagor who knowingly and materially violates its regulatory agreement by:

(1) Conveying, transferring or encumbering any of the mortgaged property, or permitting the conveyance, transfer or encumbrance of such property, without the prior written approval of the Secretary;

(2) Assigning, transferring, disposing or encumbering of any personal property of the project, including rents, or paying out any funds, except for reasonable operating expenses and necessary repairs, without the prior written approval of the Secretary;

(3) Conveying, assigning or transferring of any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property or any right to manage or receive the rents and profits from the mortgaged property, without the prior written approval of the Secretary;

(4) Remodeling, adding to, reconstructing, or demolishing any part of the mortgaged property or subtracting from any real or personal property of the project, without the prior written approval of the Secretary;

(5) Requiring, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit in excess of the prepayment of the first month's rent, plus a security deposit in an amount not in excess of one month's rent, to guarantee the performance of the covenants of the lease;

(6) Not holding any funds collected as security deposits separate and apart from all other funds of the project in a trust account, the amount of which at all times equals or exceeds the aggregate of all outstanding obligations under the account;

(7) Paying for services, supplies, or materials which exceed $500 and substantially exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished;

(8) Failing to maintain at any time the mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other related papers (including failure to keep copies of all written contracts or other instruments which affect the mortgaged property) in reasonable condition for proper audit and for examination and inspection at any reasonable time by the Secretary or any duly authorized agents of the Secretary;

(9) Failing to maintain the books and accounts of the operations of the mortgaged property and of the project in accordance with requirements prescribed by the Secretary;

(10) Failing to furnish the Secretary, by the expiration of the 60-day period beginning on the first day after the completion of each fiscal year, with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared and certified to by an independent public accountant or a certified public accountant and certified to by an officer of the mortgagor, unless the Secretary has approved an extension of the 60-day period in writing;

(11) At the request of the Secretary, his employees, or attorneys, failing to furnish monthly occupancy reports or failing to provide specific answers to questions upon which information is sought relative to income, assets, liabilities, contracts, the operation and condition of the property, or the status of the mortgage. For this purpose "monthly occupancy reports" includes any report that contains information related to occupancy, not only bare occupancy data (for example, Form 93104 relating to monthly excess income is an occupancy report);

(12) Failing to make promptly all payments due under the note and mortgage, including mortgage insurance premiums, tax and insurance escrow payments, and payments to the reserve for replacements, when there is adequate project income available to make such payments; or

(13) In the case of a section 202 project, amending the articles of incorporation or bylaws, other than as permitted under the terms of the articles of incorporation as determined by the Secretary, without the prior written approval of the Secretary.

(c) The Secretary may not impose a penalty on a mortgagor for violations of an agreement under paragraph (a) of this section if a material cause of the violation resulted from the failure of the Department, its agent or a public housing agency to comply with the agreement. (The information collection requirements in paragraphs (b), (8), (9), (10), and (11) approved under OMB Control No. 2502–0324.)

§ 30.230 Violations by issuers and custodians.

The GCPP, pursuant to § 30.110(b), may propose a civil money penalty on any issuer or custodian for a knowing and material violation as follows:

(a) Upon an issuer that:

(1) Fails to timely pass-through the entire amount of interest, scheduled principal, and unscheduled recoveries of principal due to security holders in accordance with the appropriate GNMA Guide;

(2) Fails to properly segregate the cash flow from the pooled mortgages by maintaining custodial accounts for principal and interest, taxes and other escrows, as well as late charges, assumption fees and any other fees or collections in accordance with the appropriate GNMA Guide and guaranty agreement;

(3) Fails to deposit funds received from a mortgagor or borrower in a segregated account with a depository whose accounts are insured by either the National Credit Union Administration or the Federal Deposit Insurance Corporation;

(4) Improperly uses funds deposited for principal and interest pass-through or taxes and other escrows, as well as late charges, assumption fees, and any other fees or collections, for any purpose other than that for which they were received;

(5) Transfers servicing for a pool of mortgages:

(i) To an organization not approved as a GNMA issuer; or

(ii) In a transfer not approved by GNMA;

(6) Fails to maintain a minimum net worth in assets acceptable to GNMA, or fails to maintain a required amount in letters of credit if operating with a letter of credit in lieu of adequate net worth;

(7) Fails to promptly notify GNMA in writing of any changes that materially affect business status. "Business status" means organizational structure or operating activities. A change in business status results from, among other events, merger, consolidation, divestiture, transfer of part or all of an issuer's business, change of name, voluntary or involuntary proceedings under title 11 of the United States Code or any state insolvency law, or the appointment for any purposes of a conservator, receiver, trustee or other transferee or assignee.

(8) Submits false information:

(i) In connection with any GNMA securities or pooled mortgages or loans; or

(ii) In connection with an issuer or custodian's business status; or

(9) Hires, or retains in employment, an officer, director, principal, or employee whose duties involve, directly or indirectly, programs administered by GNMA while such person was under suspension or debarment by the Secretary.

(10) Places a mortgage or loan in a GNMA pool that does not meet the eligibility requirements of the applicable GNMA Guide;

(11) Fails to timely buy-out an ineligible mortgage or loan from a GNMA pool;

(b) Upon a custodian that submits a false certification either on its own behalf or on behalf of another person.

(c) Upon an issuer or custodian that:

(1) Fails to comply with an agreement, certification, contract or condition of approval;

(2) Fails to notify GNMA of a failure or impending failure to comply with an agreement, certification, contract, or condition of approval; or

(3) Violates any provision of title III of the National Housing Act or any implementing regulations, or GNMA Handbook, Guide, or participant letter.

(The information collection requirements in paragraphs (a)(7) and (b)(2) approved under OMB Control Nos. 2503–0014 and 2503–0008)

§ 30.235 Interstate land sales violations.

The HCPP, pursuant to § 30.110.(a)(4), may propose a civil money penalty on any person who knowingly and materially violates any provisions of the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701, *et seq.*; the rules and regulations set forth at 24 CFR parts 1710, 1715 and 1720, subpart C of this part; or any order issued thereunder. Any such violation is presumed to be material, but a respondent may overcome the presumption by presenting adequate rebuttable evidence.

§ 30.240 Violations by dealers or loan brokers in the origination of property improvement loans.

(a) The HCPP, pursuant to § 30.110(a)(5), with respect to a property improvement loan or advance of credit under title I of the National HousingAct, 12 U.S.C. 1703, may propose a civil money penalty upon any dealer or loan broker who knowingly submits false information to the Secretary or to any financial institution that is a party to a title I contract of insurance with the Secretary.

(b) *Illustrative violations.* Violations of this section include but are not limited to:

(1) Falsifying information on an application for dealer approval or reapproval submitted to a lender;

(2) Falsifying statements on a HUD credit application, improvement contract, note, security instrument, completion certificate or other loan document;

(3) Failing to sign a credit application if the dealer assisted the borrower in completing the application;

(4) Advising or inducing borrowers to apply for a loan amount larger than needed to complete improvements;

(5) Inducing borrowers to certify that improvements have been completed when they have not been completed;

(6) Providing rebates, kickbacks or other things of value to borrowers to induce them to purchase improvements;

(7) Failing to advise borrowers that loan proceeds may be used only for eligible property improvements;

(8) Making false representations to lenders with respect to the creditworthiness of the borrower or the type of improvements for which the loan is sought.

§ 30.245 Continuing violations.

A violation once committed shall constitute a separate violation for each day the violation continues. However, a penalty panel may take into consideration the severity of the violation in reaching its decision with respect to the amount of the penalty it proposes to assess.

§ 30.250 Prospective application.

(a) Except as provided in paragraph (b) of this section, the Secretary may impose civil money penalties only for violations that occur after December 15, 1989. However, evidence of violations occurring before December 15, 1989 may be considered by the Secretary in determining the amount of the penalty to be imposed (see § 30.115(a)(2)).

(b) In the case of a violation of § 30.205 or § 30.210 the Secretary may impose a civil money penalty only after the effective date of this rule.

Subpart D—Procedural Rules

General Provisions

§ 30.300 Purpose and scope.

This subpart:

(a) Establishes rules of administrative procedure for imposing civil money penalties against persons who are alleged to have committed a violation under subpart C of this section;

(b) Specifies the hearing and appeal rights of persons subject to such penalties; and

(c) Applies to any civil money penalty proceeding undertaken by the Department that is not provided for elsewhere by statute or regulation;

§ 30.305 Administrative Law Judge (ALJ).

(a) *Designation.* Proceedings under this part shall be presided over by an ALJ appointed under 5 U.S.C. 3105 or detailed to HUD pursuant to 5 U.S.C. 3344. The presiding ALJ shall be designated by the Chief ALJ at HUD.

(b) *Authority.* The ALJ shall have all powers necessary to the conduct of fair and impartial hearings, including the authority:

(1) To conduct hearings in accordance with this part;

(2) To regulate the course of the hearing and the conduct of the parties and their counsel;

(3) To administer oaths and affirmations and examine witnesses;

(4) To issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(5) To rule on offers of proof and to receive evidence;

(6) To take depositions or have depositions taken when the ends of justice would be served;

(7) Upon motion of a party, to take official notice of facts;

(8) To hold conferences for the settlement or simplification of the issues by consent of the parties.

(9) To dispose of motions, procedural requests, and similar matters.

(10) To make initial decisions as described under § 30.805.

(11) To exercise such powers vested in the Secretary as are necessary and appropriate for the purpose of the hearing and conduct of the proceeding.

(c) *Party's failure to comply with order.* When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control or a request for admissions, the ALJ may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admissions, regard each matter about which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(4) Strike any part of the pleadings or other submission of the party failing to comply with the request.

(d) *Party's failure to prosecute or defend.* If a party fails to prosecute or defend an action under this part, the ALJ may dismiss the action or may issue an initial decision imposing penalties.

(e) *Party's failure to file in a timely manner.* The ALJ may refuse to consider any motion, request, response, brief or other document which is not timely filed.

(f) *Disqualification.* If an ALJ finds that there is a basis for his or her disqualification in a proceeding, the ALJ shall withdraw from the proceeding. Withdrawal is accomplished by entering a notice in the record and by providing a copy of the notice to the Chief ALJ.

(g) *Motion for recusal; ruling.* If a party believes that the presiding ALJ should be disqualified for any reason, the party may file a motion to recuse with the ALJ. The motion shall be made timely and supported by an affidavit setting forth the alleged grounds for disqualification. The ALJ shall proceed no further in the case until he or she rules on the motion. If the ALJ denies the motion, he or she shall incorporate a written statement of the reasons for the denial in the record. The denial shall be appealable only in conjunction with an appeal of the initial decision.

(h) *Redesignation of ALJ.* For reasons of judicial efficiency, or if an ALJ is disqualified, or otherwise unavailable, the Chief ALJ shall designate another ALJ to preside over further proceedings.

§ 30.310 Ex parte communications.

(a) *In General.* An *ex parte* communication is any direct or indirect communication concerning the merits of a pending proceeding, made by a party in the absence of any other party, to the ALJ assigned to the proceeding and which was neither on the record nor on reasonable prior notice to all parties. *Ex parte* communications do not include communications made for the sole purpose of scheduling hearings, requesting extensions of time, requesting information on the status of cases or, requesting the issuance of subpoenas.

(b) *Prohibition. Ex parte* communications are prohibited.

(c) *Procedure upon receipt.* If the ALJ receives an *ex parte* communication that the ALJ knows or has reason to believe is prohibited, the ALJ shall promptly place the communication, or a written statement of the substance of the communication, in the record and shall furnish copies to all parties. Unauthorized communications shall not be taken into consideration in deciding any matter in issue. Any party making a prohibited *ex parte* communication may be required to show cause why that party's claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the prohibited communication.

§ 30.315 Representation.

(a) *Representation of HUD.* HUD is represented by the General Counsel or his designee.

(b) *Representation of other parties.* Other parties may be represented as follows:

(1) Individuals may appear on their own behalf.

(2) A member of a partnership may represent the partnership.

(3) An officer of a corporation, trust or association may represent the corporation, trust or association.

(4) An officer or employee of any governmental unit, agency or authority may represent that unit, agency or authority.

(5) An attorney admitted to practice before a Federal Court or the highest court in any State may represent a party. The attorney's representation that he or she is in good standing before any of these courts is sufficient evidence of the attorney's qualifications under this section, unless otherwise ordered by the ALJ.

(c) *Notice of appearance.* Each attorney or other representative of a party shall file a notice of appearance. The notice must indicate the party on whose behalf the appearance is made. Any individual acting in a representative capacity may be required by the ALJ to demonstrate authority to act in that capacity.

(d) *Withdrawal.* An attorney or other representative of a party must file a written notice of intent 15 days in advance of withdrawal, unless the ALJ approves a lesser time period, before withdrawing from participation in the proceeding.

§ 30.320 Compromise and settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The relevant civil penalties panel has the exclusive authority to compromise or settle a case under this part at any time before the date on which the ALJ issues an initial decision. A panel may delegate such authority to one or more individuals for the purpose of expediting settlement.

(c) The Secretary has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any judicial review under § 30.900 or during the pendency of any action to collect penalties under § 30.905.

(d) All information concerning settlement negotiations between the parties shall be privileged and shall not be disclosed prior to or during the hearing.

§ 30.325 Form, filing, and service.

(a) *Form of documents to be filed.* Documents to be filed under the rules in this part shall be dated and shall show the names of the parties, the docket number (except the original complaint), the title of the document, the address and telephone number of the signatory and the title of any signatory appearing in a representative capacity. The original shall be signed in ink. Documents shall be legible and shall not be more than 8½ inches wide and 11 inches long.

(b) *Filing of documents and other materials*—(1) *Generally.* All documents and other materials relating to the proceeding shall be filed with the Chief Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, P.O. Box 44820, Washington, DC 20026–4820; telephone number (202) 755–2540; FAX number (202) 755–4039.

(2) *Copies.* Unless otherwise ordered by the ALJ, an executed original and one copy of each document (including exhibits and other materials) are to be filed. Copies need not be signed, but the name of the person signing the original shall be shown on each copy.

(3) *Methods and means.* Filing may be made by first-class mail or by other more expeditious methods of filing such as personal delivery, facsimile machine or electronic means; however, if filing is made by facsimile machine or electronic means, the following rules shall apply:

(i) Only documents of ten or fewer total pages will be accepted via facsimile machine transmittal or other electronic means.

(ii) Receipt of documents by facsimile machine or electronic means will not be acknowledged, except that the sender may request confirmation of receipt by calling the Chief Docket Clerk ((202) 755–2540).

(iii) The signed original shall be sent by first-class mail to the Chief Docket Clerk in accordance with paragraph (b)(l) of this section.

(c) *Service of documents*—(1) *By parties.* Unless otherwise ordered by the ALJ, one copy of all documents filed with the ALJ shall be served upon all other parties of record by the persons filing them. Every document filed with the ALJ and required to be served upon all parties of record shall be accompanied by a certificate of service signed by (or on behalf of) the party making the service, stating that such service has been made.

(2) *By the Office of Administrative Law Judges.* The Office of Administrative Law Judges shall serve one copy of all orders, notices, decisions, rulings on motions and similar documents which are issued by the ALJ upon each party in accordance with paragraph (c)(3) of this section. Every document served by the Office of Administrative Law Judges shall be accompanied by a certificate of service.

(3) *How service may be made.* Service may be made by first-class mail or by other more expeditious methods of service such as personal delivery, facsimile machine or electronic means; provided that service by facsimile machine or electronic means is permissible only upon prior agreement between the parties to use such means.

(4) *Where service is to be made.* Service shall be made at the address of the party's counsel or representative or, if not represented, at the last known address of the residence or principal place of business of the party. After pleadings have been filed, the addressees shown on the pleadings shall be used for service.

§ 30.330 Time computations.

(a) *In general.* In computing any period of time prescribed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal holiday. When the period of time prescribed is seven (7) days or less, intermediate Saturdays, Sundays, and Federal holidays shall be excluded in the computation.

(b) *Modification of time periods.* Except for time periods required by statute, the ALJ may enlarge or reduce any time period required under this subpart where necessary to avoid prejudicing the public interest or the rights of the parties.

(c) *Entry of orders.* In computing any time period involving the date of the issuance of an order or decision by an ALJ, the date of issuance is the date the order or decision is served by the Chief Docket Clerk.

(d) *Computation of time for delivery by mail.* (1) Documents are not filed until received by the Chief Docket Clerk. However, when documents are filed by mail, three days shall be added to the prescribed time period.

(2) Service is effected at the time of mailing.

(3) When a party has the right or is required to take an action within a prescribed period after the service of a document upon the party, and the document is served by first-class mail, three (3) days shall be added to the designated period for response.

§ 30.335 Subpoenas.

(a) *Issuance.* Upon a written request of a party the Chief ALJ or the presiding ALJ may issue a subpoena requiring:

(1) The attendance of a witness to give testimony at a deposition;

(2) The attendance of a witness to testify at a hearing;

(3) The production of relevant documents or other tangible things.

(b) *Ex Parte request.* Requests for subpoena may be made ex parte.

(c) *Time of request.* Requests for subpoenas in aid of discovery must be submitted not less than 10 days before the conclusion of discovery or 15 days before the date scheduled for the hearing. If a request for a subpoena in aid of discovery does not meet these time limits, or if a request for subpoena of a witness for testimony at a hearing is submitted three days or less before the hearing, the subpoena shall be issued at the discretion of the Chief ALJ or the presiding ALJ, as appropriate.

(d) *Service.* The party who obtains the subpoena shall serve it in accordance with § 30.325.

(e) *Witness fees and mileage.* A witness summoned by a subpoena issued under this section is entitled to the same witness and mileage fees as a witness in an action in United States District Court. Fees shall be paid by the party requesting the subpoena. A check for appropriate fees shall accompany the subpoena when served by any party other than the Department.

(f) *Motion to quash or modify subpoena.* Upon a motion by the person served with a subpoena or by a party made within five days after service of the subpoena (but in no event later than the date for compliance with the subpoena) the ALJ may:

(1) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause; or

(2) Condition denial of the motion upon the advancement, by the party by whose behalf the subpoena was issued, of the reasonable cost of producing subpoenaed documents or other tangible things.

Pleadings and Motions

§ 30.400 Complaint.

Action is initiated by the issuance of a Complaint prepared and signed by the chairman of the panel proposing the civil money penalty. The Complaint must be served on the respondent and filed with the Chief Docket Clerk, Office of Administrative Law Judges. The Complaint shall include:

(a) A short, plain statement of the facts upon which the panel has

determined that civil money penalties should be imposed;

(b) The amount of the penalty to be imposed;

(c) The legal authority for imposing the penalty;

(d) The right to appeal the imposition of the penalty;

(e) The procedures to appeal the penalty;

(f) The consequences of failure to appeal the penalty; and

(g) The name, address, and telephone number of the representative of the Department.

§ 30.405 Answer.

(a) To appeal the imposition of a penalty, a respondent must file a written Answer within 15 days of receipt of the Complaint addressed to the Chief Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, P.O. Box 44820, Washington, DC 20026–4820.

(b) The Answer shall include:

(1) A statement that respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny each allegation made in the Complaint. A statement of lack of information shall have the effect of a denial. Any allegation that is not denied shall be deemed to be admitted;

(2) A statement of each affirmative defense and a statement of facts supporting each affirmative defense; and

(3) A statement of all facts which respondent alleges serve to mitigate the amount of the penalty.

§ 30.410 Amendments and supplemental pleadings.

(a) *Amendments.*

(1) By right. HUD may amend its Complaint once as a matter of right prior to filing of the Answer.

(2) By leave. Upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties the ALJ may allow amendments to pleadings upon motion of a party.

(3) Conformity to the evidence. When issues are not raised by the pleadings but are reasonably within their scope and have been tried by the express or implied consent of the parties, the issues shall be treated in all respects as if they had been raised in the pleadings, and amendments may be made as necessary to make the pleadings conform to the evidence.

(b) *Supplemental pleadings.* The ALJ may, upon reasonable notice, permit supplemental pleadings concerning transactions, occurrences or events that have happened or have been discovered since the date of the original pleading and which are relevant to any of the issues involved.

§ 30.415 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made at the pre-hearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within five business days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may order oral argument on any motion.

(e) The ALJ may not grant a written motion before the time for filing responses has expired, except:

(1) Upon consent of the parties;

(2) Following a hearing on the motion; or

(3) To allow additional time to submit or respond to an order, pleading or motion, but only upon a showing of good cause. However, the ALJ may overrule or deny the motion without awaiting a response.

§ 30.420 Summary judgment motion.

A party may request summary judgment in cases in which there are no disputes of material facts.

Discovery

§ 30.500 Discovery.

(a) *Methods of discovery.* Parties may obtain discovery by one or more of the following methods:

(1) Oral depositions;

(2) Written interrogatories;

(3) Requests for the production of documents or other things, or for entry upon land for inspection and other purposes; and

(4) Requests for admissions.

(b) *Scope and procedure.* The parties are encouraged to engage in voluntary discovery, which shall be conducted as expeditiously and inexpensively as practicable under the circumstances. Unless otherwise ordered by the ALJ the parties may obtain discovery regarding any information, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition and location of documents or persons having knowledge of any discoverable matter. It is not grounds for objection that information sought will not be admissible if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Unless otherwise ordered by the ALJ or restricted by this section, the frequency or sequence of discovery is not limited.

(c) *No duty to supplement; exceptions.* (1) A party who responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information acquired after the response was made except:

(i) A person is under a duty to timely supplement responses with respect to any question directly addressed to:

(A) The identity or location of persons having knowledge of discoverable matters; or

(B) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the expert witness is expected to testify, and the substance of the testimony.

(ii) A person is under a duty to timely amend a previous response if the person later obtains information upon the basis of which:

(A) The person knows the response was incorrect when made; or

(B) The person knows the response, though correct when made, is no longer true, and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(2) The parties by agreement or the ALJ by order may impose a duty to supplement responses.

§ 30.505 Depositions.

(a) *Notice.* Any party desiring to take a deposition shall give reasonable notice to the deponent and to all other parties of the time, date and place of deposition. Unless the party taking the deposition and the deponent agree otherwise, notice of the taking of the deposition shall be given not less than five days before the deposition is scheduled. The attendance of a deponent may be compelled by subpoena under § 30.340.

(b) *Organizational deponents.* If a person other than an individual is named as the deponent by the party seeking to take the deposition, the person so named shall designate one or more agents to testify on the organization's behalf.

(c) *Procedure.* Depositions may be taken before any person having the power to administer oaths or affirmations. Each person deposed shall be placed under oath or affirmation, and other parties shall have the right to cross-examine. Objections to questions or documents shall be brief, stating the grounds of objection relied upon. Evidence objected to shall be taken

subject to the objections. The party seeking the deposition shall provide for the taking of a verbatim transcript of the deposition. A transcript shall be submitted to the deponent for examination and signature unless signature is waived at the conclusion of the deposition. If the deponent desires to make any change to the transcript, the deponent shall inform the person before whom the transcript was taken of those changes and the person before the deposition was taken shall incorporate the changes into the transcript prior to certifying its accuracy. If a deposition has not been signed and returned by the deponent within 30 days after its submission, the person before whom the deposition was taken shall sign it and state on the record the fact of the refusal or other reason why the deponent did not sign. Such a deposition may be used as fully as though signed.

(d) *Costs.* The party requesting the deposition shall bear all costs thereof, except the cost of transcripts for other parties.

§ 30.510 Use of depositions at hearings.

(a) *Unavailability of deponent.* Subject to appropriate rulings on such objections as were noted at the deposition or as might be valid when it is offered, a deposition or any part thereof, may be offered in evidence against any party who was present or represented at the deposition or who had due notice thereof, if the ALJ finds:

(1) That the deponent is dead;

(2) That the deponent is out of the United States, or is located at such a distance that attendance would be impractical, unless it appears that the deponent's absence was procured by the party offering the deposition;

(3) That the deponent is unable to attend or testify because of age, sickness, infirmity or imprisonment;

(4) That the party offering the deposition has been unable to procure the attendance of the deponent by subpoena; or

(5) That such exceptional circumstances exist as to make desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(b) *Impeachment.* Any deposition may be used by any party to contradict or impeach the testimony of the deponent as a witness.

(c) *Experts.* The deposition of an expert witness may be used by any party for any purpose, unless the ALJ rules that such use is unfair or a violation of due process.

(d) *Offer in part.* If only part of a deposition is offered in evidence, an adverse party may require the introduction of any part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(e) *Substitution of parties.* Substitution of parties does not affect the right to use depositions previously taken. If a proceeding has been dismissed and another proceeding involving the same subject matter is later brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the former proceeding may be used in the later proceeding.

§ 30.515 Objections to use of depositions.

Objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason that would require the exclusion of the evidence if the deponent were then present and testifying, except:

(a) Objection to any error or irregularity in the notice for taking a deposition is waived unless made prior to the beginning of the deposition;

(b) Objection to taking a deposition because of disqualification of the officer before whom it is taken is waived unless made before the beginning of the deposition or as soon thereafter as the disqualification becomes known or could have been discovered with reasonable diligence;

(c) Objection to any error or irregularity occurring at the deposition in the manner of taking the deposition, in the form of a question or an answer, in the oath or affirmation or in the conduct of parties, and objection to any error of any kind which might be obviated, removed or cured if promptly presented is waived unless timely made during the course of the deposition.

§ 30.520 Written interrogatories.

(a) *Interrogatories to parties.* Any party may serve on any other party written interrogatories to be answered by the party served. If the party served is other than an individual, the interrogatories may be answered by any officer or agent, who shall furnish such information as may be available to the party. A party may serve not more than 30 written interrogatories, including subparts, on another party without an order of the ALJ.

(b) *Responses to interrogatories.* Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless the party objects to the interrogatory. If a party objects to an interrogatory, the response shall state the reasons for the objection in lieu of an answer. The answer and objections shall be signed by the person making them, except that objections may be signed by counsel for the party. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all other parties within 15 days after service of the interrogatories. Objections to the form of interrogatories are waived unless served with a response.

§ 30.525 Production of documents and other things; entry on land for inspection and other purposes.

(a) *Request to produce or permit entry.* Any party may serve on any other party a written request to:

(1) Produce and permit the party making the request to inspect and copy any designated documents. The request shall identify the items to be inspected either individually or by category with reasonable particularity; or

(2) Permit entry upon designated land or access to other property in the possession or control of the party upon whom the request is served for any appropriate purpose.

(b) *Manner of inspecting.* The request shall specify a reasonable time, place and manner of making the inspection or performing the related acts.

(c) *Reponse to request.* Within 15 days after service of the request the party upon whom the request was served shall serve a written response on the party submitting the request. The response shall state with regard to each item or category:

(1) That inspection and related activities will be permitted as requested; or

(2) That objection is made to the request in whole or in part. If any objection is made, the response must state the reason for the objection.

§ 30.530 Admissions.

(a) *Request for admissions.* A party may serve on any other party a written request for the admission of the authenticity of any document described in or attached to the request, or for the admission of the truth of any specified fact.

(b) *Response to request.*

(1) Each matter for which an admission is requested is admitted unless, within 15 days after service of the request the party to whom the request was made serves on the requesting party:

(i) A written statement specifically denying the relevant matters for which an admission is requested;

(ii) A written statement setting forth in detail why the party cannot truthfully admit or deny the matters; or

(iii) Written objections to the request alleging that the matters are privileged or irrelevant, or that the request is otherwise improper.

(2) The party to whom the request was made may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that it has made a reasonable inquiry and that the information known or readily obtainable is insufficient to enable the party to admit or deny.

(c) *Sufficiency of response.* The party requesting admissions may move for a determination of the sufficiency of the answers or objections. Unless the ALJ finds that an objection is justified, the ALJ shall order that a response be served. If the ALJ determines that a response does not comply with the requirements of this section, the ALJ may order either that the matter is admitted or that an amended response be served.

(d) *Effect of admission.* Any matter admitted under this section is conclusively established unless, upon motion of the admitting party, the ALJ permits a withdrawal or amendment of the admission. An admission made under this section is made for the purposes of the pending proceeding only, is not an admission by the party for any other purpose, and may not be used against the party in any other proceeding.

(e) *Service of requests and responses.* Each request for admission and each response must be filed with the Chief Docket Clerk, Office of Administrative Law Judges and served in accordance with § 30.325.

§ 30.535 Protective orders.

Upon motion of any person from whom discovery is sought the ALJ may make any Order which justice requires to protect the person from annoyance, embarrassment or oppression, or to prevent the unnecessary disclosure or publication of information contrary to the public interest and beyond the requirements of justice in the particular proceeding.

§ 30.540 Failure to cooperate in discovery.

(a) *Motion to compel discovery.* If a deponent fails to appear for deposition or fails to answer a question during examination, or if a party upon whom a request has been made under § 30.520 through 30.530 fails to respond adequately, objects to a request or fails to permit inspection as requested, the discovering party may move for an order from the ALJ compelling an appearance, a response or an inspection in accordance with the request, or for imposing sanctions under § 30.305.

(b) *Evasive or incomplete answers.* For the purposes of this section an evasive or incomplete answer or response will be treated as a failure to answer or respond.

Pre-Hearing Procedures

§ 30.600 Pre-hearing statements.

(a) *In general.* Before the commencement of the hearing, the ALJ may direct parties to file pre-hearing statements.

(b) *Contents of statement.* The pre-hearing statement must state the name of the party or parties presenting the statement and, unless otherwise directed by the ALJ, briefly set forth the following:

(1) Issues involved in the proceeding;

(2) Facts stipulated by the parties and a statement that the parties have made a good faith effort to stipulate to the greatest extent possible;

(3) Facts in dispute;

(4) Identification of witnesses (together with a summary of the testimony expected) and exhibits to be presented at the hearing;

(5) A brief statement of applicable law;

(6) Conclusions to be drawn;

(7) Estimated time for hearing; and

(8) Such other information as may assist in the disposition of the proceeding.

§ 30.605 Pre-hearing conference.

(a) *In general.* Before the commencement or during the course of the hearing, the ALJ may direct the parties to participate in a conference to expedite the hearing.

(b) *Matters considered.* At the conference, the following matters may be considered:

(1) Simplification and clarification of the issues;

(2) Necessary amendments to the pleadings;

(3) Stipulations of fact and of the authenticity, accuracy, and admissibility of documents;

(4) Limitations on the number of witnesses;

(5) Negotiation, compromise, or settlement of issues;

(6) The exchange of proposed exhibits;

(7) Matters of which official notice will be requested;

(8) A schedule for the completion of actions discussed at the conference;

(9) Such other information as may assist in the disposition of the proceeding.

(c) *Conduct of conference.* The conference may be conducted by telephone, correspondence or personal attendance. Conferences, however, shall generally be conducted by a conference call, unless the ALJ determines that this method is impracticable. The ALJ shall give reasonable notice of the time, place and manner of the conference.

(d) *Record of conference.* Unless otherwise directed by the ALJ, the conference will not be stenographically recorded. The ALJ will reduce the actions taken at the conference to a written order or, if the conference takes place less than seven days before the beginning of the hearing, may make a statement on the record summarizing the actions taken at the conference.

Hearings

§ 30.700 The hearing.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the respondent is liable for a civil penalty under subpart C and, if so, in what amount, considering any aggravating or mitigating factors.

(b) Where there is no dispute of material facts, the parties may agree to submit the matter to the ALJ on the written record.

(c) Unless otherwise ordered by the ALJ all hearings shall be open to the public.

§ 30.705 Location of the hearing.

The location of the hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties and their representatives.

§ 30.710 Evidence and standard of proof.

(a) *Evidence.* Every party shall have the right to present its case or defense by oral and documentary evidence unless otherwise limited by statute, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Irrelevant, privileged, or unduly repetitious evidence shall be excluded. Unless otherwise provided for in this part, the Federal Rules of Evidence shall provide guidance for the conduct of proceedings under this part.

(b) *Testimony under oath or affirmation.* All witnesses shall testify under oath or affirmation.

(c) *Objections.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds for objections. Rulings on objections shall be a part of the transcript. Failure to object to admission or exclusion of evidence or to any evidentiary ruling shall be considered a waiver of

objection, but no exception to a ruling on an objection is necessary in order to preserve it for appeal.

(d) *Authenticity of documents.* Unless specifically challenged, all relevant documents shall be presumed authentic. An objection to the authenticity of a document shall not be sustained merely on the basis that it is not the original.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact. Stipulations may be received in evidence at a hearing and when received shall be binding on the parties with respect to the matters stipulated.

(f) *Official notice.* All matters officially noticed by the ALJ shall appear on the record.

(g) *Burden of proof.* The burden of proof shall be upon the proponent of an action or an affirmative defense unless otherwise provided by statute.

(h) *Standard of proof.* The standard of proof shall be preponderance of the evidence.

§ 30.715 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained from the reporter responsible for transcribing the hearing.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Secretary.

§ 30.720 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing post-hearing briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

Defaults and Decisions

§ 30.800 Default upon failure to file an Answer.

(a) If the respondent does not file an Answer within the time prescribed in § 30.405, the ALJ shall issue a Default Judgment.

(b) The ALJ shall assume the facts alleged in the Complaint to be true, and if such facts establish liability under Subpart C, the ALJ shall issue an initial decision imposing the amount of penalties stated in the Complaint.

(c) Except as otherwise provided in this section the respondent, by failing to file a timely Answer, waives any right to further review of the penalties imposed under this Part, and the initial decision shall become final and binding upon the parties 90 days after it is issued.

(d) If, before an initial decision becomes final, the respondent files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the respondent from filing an Answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(e) If in the motion the respondent demonstrates extraordinary circumstances excusing the failure to file a timely Answer, the ALJ shall withdraw any initial decision made under paragraph (b) of this section and shall grant the respondent an opportunity to answer the Complaint.

(f) The respondent may appeal to the Secretary a decision denying a motion to reopen by filing a notice of appeal with the Secretary within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the Secretary decides the issue.

(g) If the respondent files a timely notice of appeal with the Secretary, the ALJ shall forward the record of the proceeding to the Secretary.

(h) The Secretary shall decide, based solely on the record forwarded by the ALJ, whether extraordinary circumstances excused the respondent's failure to file a timely Answer.

(i) If the Secretary decides that extraordinary circumstances excused the respondent's failure to file a timely Answer, the Secretary shall remand the case to the ALJ with instructions to grant the respondent an opportunity to answer.

(j) If the Secretary decides that the respondent's failure to file a timely Answer is not excused, the Secretary shall reinstate the initial decision of the ALJ, which becomes final and binding upon the parties upon filing of the Secretary's written finding with the Chief Docket Clerk, Office of Administrative Law Judges.

§ 30.805 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the allegations in the complaint violate any provision of subpart C of this part; and

(2) If the person is liable for penalties, the appropriate amount of any such penalties considering any mitigating or aggravating factors.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any respondent determined to be liable for a civil penalty to file a notice of appeal with the Secretary. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the Secretary, the initial decision shall constitute the final decision of the Department and shall be final and binding on the parties 90 days after it is issued by the ALJ.

§ 30.810 Finality and secretarial review.

(a) The ALJ's initial decision shall be final unless the Secretary or the Secretary's designee decides as a matter of discretion to review the findings of the ALJ.

(b) Any party may file, within 15 days after receipt of the initial decision, a notice of appeal to the Secretary seeking a review of that decision. A copy of the notice of appeal must be served on the opposing party.

(c) The notice of appeal must be accompanied by a statement of not more than 10 pages setting forth the specific findings of the ALJ which are being challenged and the factual and/or legal basis for such challenge.

(d) The opposing party may respond to the appeal. Such response may not exceed 10 pages and must be filed with the Secretary within 10 days after receipt of the notice of appeal.

(e) The Secretary shall decide within 30 days after receipt of a notice of appeal whether to review or to decline review of the initial decision. The Secretary shall serve copies of his decision on all parties.

(f) The Secretary or designee after review may affirm, modify or reverse the initial decision. The Secretary's decision must be issued within 90 days after the initial decision has been filed.

(g) If after considering the notice of appeal, the Secretary declines review, the initial decision becomes final on the date the decision to decline is filed with the Chief Docket Clerk, Office of Administrative Law Judges. Any decision by the Secretary after review becomes final on the date it is filed with the Chief Docket Clerk.

Judicial Review and Collection of Civil Penalties

§ 30.900 Judicial review.

(a) After having exhausted all administrative remedies, a person against whom the Secretary has imposed a civil money penalty under this part may obtain a review of the Secretary's final decision by filing a written petition with the appropriate United States Court of Appeals.

(b) The petition must be filed within 20 days after the Secretary's decision is filed with the Chief Docket Clerk, Office of Administrative Law Judges.

§ 30.905 Collection of penalties.

(a) If any person fails to comply with the Secretary's final decision imposing a civil money penalty, the Secretary may request the Attorney General to bring an action in an appropriate United States district court to obtain a judgment against the person who has failed to comply with the Secretary's final decision, provided that the time for appeal of the Secretary's decision has expired.

(b) The validity and appropriateness of the Secretary's final decision imposing the civil penalty shall not be subject to review in the district court.

(c) The Secretary may obtain such other relief as may be available, including attorney fees and other expenses in connection with the action.

(d) Interest on any unpaid penalty may be assessed in accordance with 31 U.S.C. 3717.

§ 30.910 Offset.

The Secretary may exercise rights to any type of administrative offset that is available to collect a civil money penalty.

Dated: August 27, 1990.

Alfred A. DelliBovi,

Acting Secretary.

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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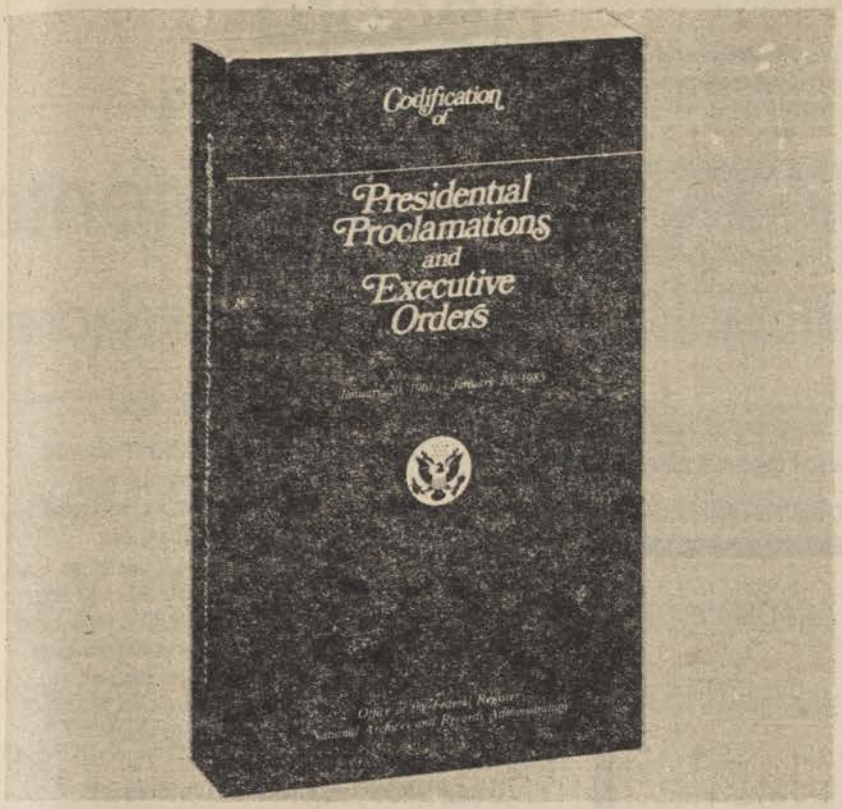

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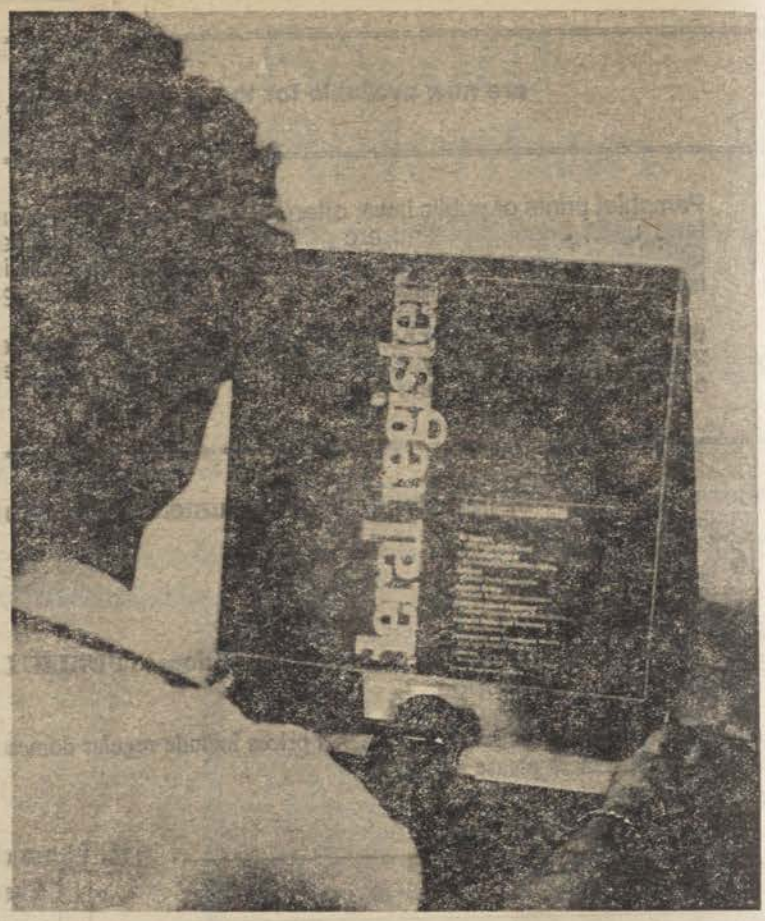

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